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LORD KENYON.

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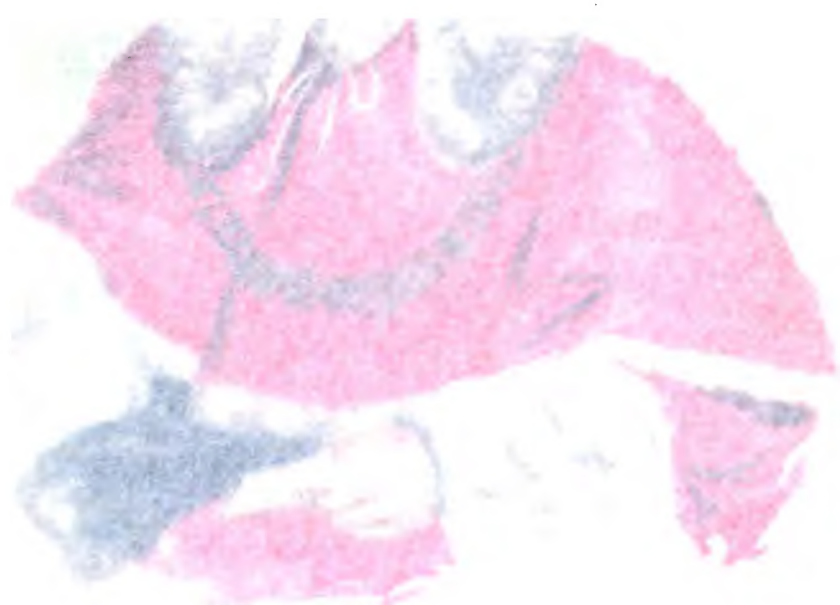
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EDITED BY J. M. L.

VOL. IV

NORTH GREEK, LONG ISLAND, N. Y.
EDWARD C. LLOYD, SON, C. D., PUBLISHER.
1899.



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THE LIVES
OF
THE CHIEF JUSTICES
OF
ENGLAND.

FROM THE NORMAN CONQUEST TILL THE DEATH
OF LORD TENTERDEN.

BY
JOHN, LORD CAMPBELL,
Lord Chief Justice and Lord High Chancellor of England.

*John Campbell
Baron, 1793-1841*

New and Revised Edition.
WITH ILLUSTRATIONS AND NUMEROUS ANNOTATIONS.
EDITED BY JAMES COCKCROFT.

VOL. IV.

NORTHPORT, LONG ISLAND, N. Y.:
EDWARD THOMPSON CO., PUBLISHERS.
1899.

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ROBERT DRUMMOND, ELECTROTYPED AND PRINTER, NEW YORK.

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JOSEPH ADDISON.

LIVES
OF THE
CHIEF JUSTICES OF ENGLAND.

CHAPTER XXXI.

CONTINUATION OF THE LIFE OF LORD MANSFIELD
TILL HE WAS MADE SOLICITOR GENERAL AND
ENTERED THE HOUSE OF COMMONS.

MURRAY remained at the bar above two years without a brief, or, at least, without being employed in a cause of importance. During this trying interval his courage fully supported him, and, although he must have passed anxious moments, he still felt the confidence of ultimate success which genius sometimes prompts. His friends were most afraid, from his literary connections and propensities, that he would be induced to relax his resolution to raise himself by the law, and that he would attempt authorship or prematurely mix in political strife. The recent examples of Addison¹ and Prior² were very seducing to those

CHAP.
XXXI.
A.D. 1730
—1732.
At first
without
business.

1. Joseph Addison, an English author, pre-eminent as an essayist, humorist, and moralist, was born near Amesbury, in Wiltshire, 1672. Addison wrote about three sevenths of the "Spectator," the success of which was such as no similar work has ever obtained. In 1713 he produced his tragedy of "Cato," which was greeted with "thunders of unanimous applause." In 1715 he began to publish "The Freeholder," his best political work. He died on the 17th of June, 1719.—*Chalmers' Biog. Dist.*

2. Matthew Prior, an English poet and diplomatist, born in 1664. He was educated at the expense of the Earl of Dorset in St. John's College,

CHAP. XXXI. who might be disposed to prefer the primrose path of poetry. But Murray now, and ever after, displayed a rooted attachment to his profession, and a firm purpose to establish his reputation by reaching its highest honors. He therefore actually declined an offer made to him to bring him immediately into parliament,—being convinced that a barrister ought not, in prudence, to expose himself to this distraction till he is fully established in practice and may fairly expect to be appointed Solicitor General; and we shall see that he afterwards preferred a seat on the bench to the leadership of the House of Commons and the near prospect of being Prime Minister. I do not believe that he looked upon the fame of a great judge with more respect than that of a great poet or a great statesman, but he made a prudent estimate of his own powers. He certainly had not sufficient imagination for poetry, or moral courage for statesmanship, although his fine understanding and his eloquence were sure to command success in the career on which he had entered. Thus, in the words which he himself employed, “he had genius and resolution enough to raise himself above the common level;

‘Victorque virūm volitare per ora.’”

Never absent from chambers when there was a possibility of a client calling to consult him, or from Westminster Hall when a diligent young barrister ought to be seen there, he still contrived to keep up an intercourse with the witty and the powerful. He now took chambers at No. 5 King's Bench Walk, in

Cambridge. To ridicule Dryden's “Hind and Panther,” Prior and Charles Montague wrote a poem entitled “The City Mouse and Country Mouse” (1687). In 1700 he produced “Carmen Seculare,” a poetical panegyric on William III., which Johnson calls “one of his most splendid compositions.” Among his poems are “Solomon,” an “Ode on the Battle of Ramillies,” and several tales. He died in 1721.—*Bee-ton's Biog. Dict.*

the Temple; and here Pope frequently visited him in the evening, to save him from the suspicion of neglecting his profession by haunting coffee-houses, as he had allowed himself to do while a student. We may easily imagine that the lawyer and the poet occasionally met at the *Grecian*, or *Dick's*, or *The Devil's Tavern*,¹ which were close by,—or in the shop of Lintot² between the two Temples, or that of Tonson³ in Chancery Lane; or that they went together to the theatre in Lincoln's Inn Fields, to see the performances of Betterton⁴ and Mrs. Clive;⁵—but for such meetings I find no author-

CHAP.
XXXI.
He takes
chambers
in King's
Bench
Walk,
where he is
visited by
Pope.

1. It was next door to Child's Bank that the famous "Devil Tavern" stood, with the sign of St. Martin and the Devil, where the Apollo Club had its meetings, guided by poetical rules of Ben Jonson, which began—

"Let none but guests or clubbers hither come;
Let dunces, fools, and sordid men keep home;
Let learned, civil, merry men b' invited,
And modest too; nor be choice liquor slighted;
Let nothing in the treat offend the guest:
More for delight than cost prepare the feast."

We hear of Swift dining "at the Devil Tavern with Dr. Garth and Addison," when "Garth treated," and of Dr. Johnson presiding here at a supper-party in honor of the publication of Mrs. Lennox's first book.—*Hare's Walks in London*.

2. Close beside "The Devil," Bernard Lintot, the great bookseller of the last century, kept the stall on which Gay was so anxious that his works should appear.

"Oh, Lintot, let my labors obvious lie
Ranged on thy stall for every envious eye;
So shall the poor these precepts gratis know,
And to my verse their future safeties owe." (*Trivia*, Book ii.)

—*Hare's Walks in London*.

Barnaby Bernard Lintot (1675–1736), publisher, was probably a nephew of the Joshua Lintot who was printer to the House of Commons between 1708 and 1710. He published poems and plays for Pope, Gay, Farquhar, Fenton, Parnell, Steele, etc. See Stephen's *Biog. Dict.*

3. Jacob Tonson, an English publisher, born in London about 1656. He published the works of Dryden and other eminent writers. In several letters to Tonson, Dryden complains that Tonson sent him brass shillings and clipped coins. Died in 1736.—*Thomas' Biog. Dict.*

4. Thomas Betterton, an English dramatist, and one of the most popular actors of his time, born in Westminster, London, in 1635. He excelled in the *roles* of Macbeth, Othello, and Hamlet, and was commended by Addison, Dryden, and Pope. Died in 1710.—*Thomas' Biog. Dict.*

5. Catherine Clive, an eminent English actress, born in 1711, made

CHAP. ity; and we must tell what we know to be true, not
XXXI. what we consider to be probable.

Murray continued as eager as when he was a student under the bar to increase his store of professional learning, and by no means (after the common fashion of lawyers who have had an academical education) abandoned liberal studies. Through the busiest part of his life he found time to keep up his acquaintance with the Greek and Latin classics, and to gain a knowledge of new publications of merit soon after they issued from the press. In an interval of leisure he showed that he was qualified, like M. Guizot, the Prime Minister of Louis Philippe, to gain celebrity as a professor

His letters
"On the
Study of
Ancient
and
Modern
History."

in a university. For the benefit of the heir of the ducal house of Portland, he wrote two very long letters to that young nobleman "On the Study of Ancient and Modern History,"—which would constitute an admirable syllabus for a course of lectures. It is with some humiliation that I look to the members of the profession at the present day without being able, either at the bar or the bench, to discover any one with such

His acquaintance
with his-
torical
books,
events, and
characters.

an extensive, exact, and philosophical acquaintance with historical books, historical events, and historical characters. You would suppose that he had lived in every age which he describes,—having witnessed the occurrences which he narrates, and conversed with the men to whom he presents his readers. In ancient

His re-
marks on
the causes
of the
decline of
the Roman
empire.

history I think he most excites admiration by his remarks on the causes of the decline of the Roman empire, which, even with the assistance of Montesquieu¹

her *début* at Drury Lane about 1730. She performed in comedy for about thirty years, with distinguished success. She was married early to a Mr. Clive, from whom she soon separated. Died in 1785.—*Thomas' Biog. Dict.*

1. Charles de Secondat, Baron de Montesquieu, a brilliant, original, and popular French author, born near Bordeaux, 1689; died in Paris, 1755. His works included "Persian Letters" (1721), "Considerations on the Causes of the Grandeur and Decadence of the Romans" (1734), and "The

and Bossuet,¹ till Gibbon² arose few so thoroughly understood. The familiarity which he displays with modern history is quite astounding,—and I had almost said *appalling*, for it produces a painful consciousness of inferiority, and creates remorse for time misspent. He seems to have carried in his memory every remark of every French historical writer from Philip de Comines³ to Voltaire;⁴ and by a few mas-

CHAP.
XXXI.

His admira-
tion of
French
genius.

Spirit of the Laws" (1748). He devoted fourteen years to the last work, which excited almost universal admiration. In eighteen months it ran through twenty-two editions.—*Chalmers' Biog. Dict.*

1. James Bossuet, a celebrated French preacher, born at Dijon, 1627; died at Paris, 1704. In 1669 he was appointed tutor to the Dauphin, for whom he composed his "Discourse on Universal History," which was printed in 1681. It is divided into three parts, and Mr. Charles Butler, a critic, says that it scarcely contains a sentence in which there is not some noun or verb conveying an image, or suggesting a sentiment of the noblest kind.—*Beeton's Biog. Dict.*

2. Edward Gibbon (*b.* 1737, *d.* 1794), English historian, born at Putney, and educated at Westminster and Magdalen College, Oxford. While at the University he was received into the Romish Church, but having been sent to a Calvinist at Lausanne became a Protestant again the next year. At Lausanne he met Voltaire, and fell in love with Mademoiselle Curchod, afterwards Madame Necker. He returned to London in 1758, and after a short term of service in the Hampshire militia, revisited the Continent, staying especially at Paris and Rome. When again in England he wrote *Mémoires Littéraires de la Grand Bretagne*, and set to work on his great book, "The Decline and Fall of the Roman Empire," the first volume of which appeared in 1776, and the last in 1788. He entered Parliament in 1774 as a supporter of Lord North, wrote the *Mémoire Justificatif*, and obtained a place at the Board of Trade. From 1783 to 1793 he lived at Lausanne, and died soon after his return.—*Cassell's Biog. Dict.*

3. Philip de Comines (1445–1509) was a French historian of Flemish descent, at first a follower of Charles the Bold of Burgundy; he afterwards transferred his services to Louis XI. of France, who made him Lord of Argenton. His *Mémoires* are the most valuable history of the time.—*Appleton's Dict. of Biog.*

4. Voltaire (1694–1778), whose original name was François Marie Arouet, was born at Paris, educated by the Jesuits, and became a *protégé* of Ninon de l'Enclos. In 1716–17 he was imprisoned in the Bastille on suspicion of writing a libel on the King, and *Œdipe* was produced in 1718. After another imprisonment he went to England, where, in 1728, the *Henriade* was published. He escaped prosecution by disavowing his writings, and in 1736 began to correspond with Frederick the Great. After the rise of the Pompadour he secured a reception at Court and at the Académie. In 1750 he went to the Court of Berlin, where he

CHAP.
XXXI.

Graham, heard on the 12th of March, 1732-33. Although this was an appeal from the Court of Session, it excited very lively interest, and persons in all ranks of life crowded to the bar of the House of Lords to listen to the arguments upon it, for it related to the South Sea Bubble,¹ which had propagated an epidemic madness in the nation. The respondent, residing in the city of Edinburgh, to which the malady had penetrated, employed the appellant in London to buy some South Sea stock when it was at an extravagant height and was expected to rise still higher. But immediately after the purchase it fell down to nothing, and was utterly unsalable and worthless. The respondent then sued the appellant for damages, on the ground that he had been deceived and defrauded; and the Scotch judges, out of compassion to their countryman, decreed that the appellant, the English broker, should reimburse him to the amount of the purchase-money

1. In 1711 a company was formed for trading to the "South Seas," which was induced to lend ten millions to the Government during Harley's Treasurership, and to allow the debt to be funded, in return for a monopoly of the trade with the Spanish colonies. In 1717 Walpole persuaded the South Sea creditors to make a further advance of five millions to the Government. In 1720 the South Sea Company, desirous of further Government credit, agreed to take up thirty-two millions of the Government annuities, and to persuade the holders to take in exchange South Sea stock. The Government annuities had borne seven or eight per cent interest; the company was to receive five per cent till 1727, and four per cent afterwards. In order to outbid the offers of the Bank of England and other associations, the South Sea Company agreed to pay to Government a heavy premium of more than seven millions. The company had thus weighted itself heavily, and it was doomed to failure if the public did not subscribe for its shares readily. At first there seemed no danger of this. The public rushed in to subscribe, and the company's stock was taken with the utmost eagerness. But companies of all kinds were formed, and a frenzy of gambling and stock-jobbing took possession of the nation. Many of the schemes formed were fraudulent or visionary. The South Sea Company, whose own shares were at 900 per cent premium, took action against some of the bubble companies and exposed them. A panic set in, all shares fell at once, and the South Sea Company's own stock fell in a month (September, 1720) from 1,000 to 175. The ruin was widespread, and extended to all classes of the nation. See Low and Pulling's Dict. of Eng. Hist.

and interest at 5 per cent. Mr. Murray tried to support this decree by much ingenuity, and by a very striking description of the frauds practised by the concoctors of the late gigantic conspiracy and the sufferings of their victims. He was unsuccessful; for the House of Lords yielded to the reasoning on the other side, that his client had only to blame his own covetousness and credulity; but he excited great admiration by the gallant stand he had made in an unequal fight.¹

CHAP.
XXXI.

In a few days after, he gained still higher credit as counsel for the young Marquis of Annandale, who was in a state of mental imbecility, and whose companion or keeper was the philosopher David Hume.² The action respected the expenses incurred in the funeral of the late Marquis, which had been conducted in a style of prodigious splendor, without any authority from his executors. There being no decisions whatever in point, the case was to be decided by the principles of the Roman Civil Law; and Murray contended, with much force, that, according to the just view of the *Actio Funeraria*, the demand could not be supported. This seemed to be the opinion of the House; but their Lordships, not deeming it for the honor of

He gains
high credit
as counsel
for the
Marquis of
Annan-
dale.

1. Lords' Journals; printed Case, preserved in the library of the House of Lords.

2. David Hume, a celebrated English historian and philosophical writer, born in Edinburgh, 1711; died in the same city, 1776. He was destined for the law, but having little inclination for that profession, he tried mercantile pursuits, and became, in 1734, clerk in an eminent house at Bristol. But having a strong propensity to literature, he soon resigned his position and went to France, where he wrote his "Treatise on Human Nature." Neither this nor his "Moral Essays" (1742) met with a cordial reception. In 1754 appeared the first volume of the "History of England, from the Accession of James I. to the Revolution." This was poorly received; but the second, in 1756, met with a better fate, and "helped," as the author said, "to buoy up its unfortunate brother." His "History," although written in an excellent style, is not to be relied upon, by reason of its partiality and inaccuracy. He left a charmingly-written autobiography.—*Beeton's Biog. Dict.*

CHAP. XXXI. the peerage that a tradesman should suffer who had wished to do honor to a deceased member of their body, deferred giving judgment, and there was a compromise between the parties.¹

A.D. 1733

—34.
Case of
Moncrieff
v. *Mon-*
crieff.

In the following session he distinguished himself still more in a case of *Moncrieff v. Moncrieff*. Sir Thomas Moncrieff, a baronet of ancient family, but of small fortune, with *five children*, gave the eldest son a liberal education, and wished him to embrace some profession to enable him to make his way in the world. The young gentleman, however, preferred being idle; and, after a course of dissipation, married against his father's consent. Sir Thomas, incensed at his conduct, refused to see him till by amendment of life he should deserve forgiveness, but settled upon him an annual allowance of 2,000 marks Scotch, making 111*l.* sterling. A process was then commenced in the Court of Session against the father by the son, who claimed as of right an augmentation of this stipend; and the Scotch judges, strangely hallucinating, decreed him 200*l.* sterling a year.—Mr. Murray, for the appellant, argued thus:

His argu-
ment for
the appel-
lant.

“In the admitted absence of any statute, or positive rule, or prior decision upon the subject, will any expounder of the law of nature, on which the claim is rested, say that parents who have properly reared their offspring are bound to maintain them in idleness when they are grown up and by industry might easily obtain a maintenance for themselves? or that a son ‘who hearkeneth not to the voice of his father,’ and who therefore by the law of Moses was declared ‘worthy of death,’ cannot forfeit this claim by disobedience? Sir Thomas Moncrieff has actually allowed the respondent a sum sufficient not only to supply him with the necessaries, but in that cheap country with all the conveniences, of life. That a son, beyond a necessary subsistence, has a right to a determinate part of his father's property to waste in superfluities, is what was never pretended in any part of the

1. Lords' Journals. Murray's leader in this appeal was Duncan Forbes of Culloden, afterwards President.

world. By the law of Scotland a man seised in fee simple may disinherit his son, which proceeds upon the supposition that he has an absolute power over it during his life. If this action is founded on the law of nature, nature knows no distinction between the eldest and the youngest child, or between a provision for sons and for daughters; and as the appellant has four other children with the same rights as the respondent, if this decree stands they are entitled to sue him for more than all he has in the world to divide among them, and they may leave him to perish for want."

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The House sustained the appeal, and reduced the allowance to the sum which the appellant had offered.¹

Murray was complimented several times, both by Lord Cowper and Lord Macclesfield, upon the talent he had exhibited in arguing these cases; and thenceforth he was retained in almost all the appeals heard at the bar of the House of Lords, from whatever part of the kingdom they came.

In 1737 he acquired immense *éclat* as counsel against the bill introduced to disfranchise the city of Edinburgh on account of the alleged misconduct of the inhabitants in putting Captain Porteus to death. He dwelt with much force on the insult about to be offered to the capital of Scotland; he pointed out the injustice of punishing the many for the supposed offence of the few; and, although he could not justify the violence which had been committed, he strongly insinuated that the spirit of wild justice which had been displayed, the calmness and solemnity with which the deed had been done, and the utter impossibility of ever detecting, by enormous rewards, the individuals personally engaged in it, redounded to the honor of the Scottish nation.

A.D. 1737.
He is
counsel
against the
bill for dis-
franchising
the city of
Edinburgh
for the
murder of
Captain
Porteus.

The measure was defeated; the freedom of the city of Edinburgh was voted by the corporation to Mr.

1. Lords' Journals, 1733; Holliday, 30, 31.

CHAP. Murray for the zeal and ability he had displayed as
XXXI. their advocate, and prophecies were uttered copiously all over Scotland that he would one day confer high honor on his country.¹ Hitherto, however, he had fared rather indifferently in Westminster Hall. He did not addict himself to any one court in particular; but, without a regular flow of business, he went where a stray brief might carry him.

A.D. 1736.
Case of
Buvot v.
Barbut.

His name does not yet appear in the Common Law or Equity Reports; but we know, from his own statement when Chief Justice of the King's Bench,² that, in the year 1736, he was counsel before Lord Talbot in the great case of *Buvot v. Barbut*, where, from his reputation for acquaintance with the law of nations, he was called upon to argue the question "whether a foreign minister can, by engaging in commerce, waive his privilege from arrest?" and "whether an agent of commerce, or a consul, is entitled to the privileges of a public minister?" Although he was too modest to say so, we need not doubt that he eminently distinguished himself on this occasion.

But still his fee-book, when summed up at the end of the year, showed only a very moderate figure; and, according to the graduated gratitude of the old prothonotary, although he ought to have written at the bottom of the page LAUS DEO!³ he was not yet called

1. See Parl. Hist. vol. x. p. 187. An act was passed merely to disqualify Wilson, the Lord Provost, and to impose a small fine upon the city. (10 Geo. II. c. 34.) Gilbert Elliot, the ancestor of the Earl of Minto, then a boy of fourteen, afterwards Lord President of the Court of Session, and author of the song celebrated by Sir Walter Scott in the Lay of the Last Minstrel, "Ambition is no Cure for Love," wrote an encomiastic copy of verses on Mr. Murray for his patriotic exertions, which may be found in Holliday, p. 39. They are not so promising as might have been expected.

2. E. T. in Cases temp. Talbot, 181. See Burrow. Holliday must be wrong, making it 1754. See Case in my Life of Talbot.

3. "Praise to God."

upon for LAUS MAGNA!!¹ still less LAUS MAXIMA CHAP. XXXI.
DEO!!!²

For this reason, in spite of his rising fame, he met with a sad disappointment in an affair of the heart. Without being of a romantic turn of mind he was sincerely attached to a young lady of beauty, accomplishments, and birth, and she listened favorably to his suit; but her family, requiring a sight of his rent-roll, were not contented that her jointure and pin-money should be charged upon his "rood of ground in Westminster Hall," and married her to a squire of broad acres in a midland county. As he was exceedingly dejected by this event, his friend Pope tried to cheer him by addressing to him an imitation of the Sixth of the First Book of Horace's Epistles ("Nil admirari," etc.), thus beginning:

A.D. 1738.
He is
crossed in
love.

" 'Not to admire, is all the art I know
To make men happy and to keep them so.'
Plain truth, dear Murray, needs no flowers of speech;
So tale it in the very words of Creech."

Pope's imi-
tation of
one of
Horace's
Epistles.

After pointing out various instances of the vanity of human wishes, he thus proceeds:

" If not so pleased, at council board rejoice
To see their judgments hang upon thy voice;
From morn to night, at Senate, Rolls, and Hall,
Plead much, read more, dine late, or not at all.
But wherefore all this labor, all this strife,
For fame, for riches, for a noble wife?
Shall one whom native learning, birth conspired
To form, not to admire, but be admired,
Sigh while his Chloe, blind to wit and worth,
Weds the rich dulness of some son of earth?
Yet time ennobles or degrades each line;
It brighten'd Craggs's, and may darken thine.
And what is fame? the meanest have their day;
The greatest can but blaze and pass away.
Graced as thou art with all the power of words,
So known, so honor'd in the House of Lords—

1. "Great praise."

2. "Greatest praise to God."

3. Such discrepancy is there between Law and Poetry, that Pope himself cannot pay a compliment to a lawyer without giving a specimen

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XXXI.

illness of his leader. Nay, we are circumstantially told that "on Sergeant Eyre's sudden seizure in court, when about to speak for the defendant, the duty of the senior devolved on the junior counsel, who at first modestly declined it for want of time to study the case, and that the judge, to indulge him, adjourned the trial for about an hour."¹ Not only is this fit of poor Sergeant Eyre unnoticed by the contemporary accounts of the trial which were printed, but they actually give us his speech to the jury, which seems to have been "hot and heavy," as became the coif.² Mr. Murray followed, and was much more lively and impressive. In truth, it was a most infamous action, and nowadays, on the maxim "*volenti non fit injuria*," the plaintiff would have been nonsuited, for he had connived at his own dishonor; and it was proved that, when Colonel Sloper and Mrs. Cibber were in bed together, he had brought them a pillow and put it under their heads. The magazines³ are rapturous in their praise of Mr. Murray's performance, but give us a very meagre account of it; and my readers, making allowance for bad reporting, must not conclude that it was feeble from the following extract, which is the most favorable I can find:

Extract
from his
speech to
the jury

"The plaintiff tells his servant that 'Colonel Sloper is a *good-natured boy*.' To this boy he resigns his wife, from this boy he takes money to maintain his family, and then he comes to a court of justice and to a jury of gentlemen for reparation in damages. It devolves on you, gentlemen, to consider the consequences of giving damages in a case of this nature. Infinite mischiefs would ensue if it should once come to be understood in the world, that two artful people, being husband and wife, may lay a snare for the affections of an unwary young gentleman, take a sum of money from him, and then come to extort more with the assist-

1. Holliday, p. 35.

2. Legal conundrum: "Why is a Sergeant's speech like a tailor's goose?" A. "Because it is *hot and heavy*!"

3. Reporting law trials in newspapers did not begin till long after.

ance of twelve jurymen. I desire to be understood as by no means an advocate for the immoralities of my client; but remember, gentlemen, this is not a prosecution seeking punishment for the sake of the public; the only question here is, whether the plaintiff has been injured, and surely he cannot justly represent himself as injured if he has not only consented but received a high price for that which he does not at all value. However, gentlemen of the jury, if it be thought requisite to find a verdict for the plaintiff, we have not a denomination of coin small enough to measure the damages."

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The jury found a verdict for the plaintiff, with 10*l.* damages, said to be "a piece of bank paper of the smallest value at that period in circulation."¹

Mr. Murray's eloquence was the theme of universal applause; and, in spite of misrepresentation and exaggeration, there can be no doubt that this speech, delivered in common professional routine, placed him at the head of the bar. He never countenanced the fable of Sergeant Eyre's fit, and knew well that he had reaped the fruit of premeditation and study; yet he used to talk of this trial with much complacency, and to say, "Henceforth business poured in upon me from all quarters, and from a few hundred pounds a year, I fortunately found myself in the receipt of thousands."

The most distinguished client who solicited his patronage was Sarah, Duchess of Marlborough, who had several important suits going on in the Court of Chancery respecting the trusts of her husband's will: and, desirous of stimulating his zeal in her favor, she resolved to make him a liberal donation, although not quite so splendid a one as that received from her by his rival Pitt. She sent him a general retainer, with a thousand guineas. Of these he returned her

Sarah,
Duchess of
Marlbor-
ough, his
client.

1. Holliday, 36; Selwyn's *Nisi Prius*, 10. Lord Kenyon, in *Duberley v. Gunning*, 4 Term Reports, 654, represents the verdict in *Cibber v. Sloper* to have been for the defendant; but he was quite mistaken.

CHAP. nine hundred and ninety-five, with an intimation that
XXXI. "the professional fee, with a general retainer, could
neither be less nor more than five guineas."

As might be expected, she was a very troublesome client, and she used to visit him herself at very unseasonable hours. On one occasion, when late at night he came to his chambers, he found them almost blocked up by a splendid equipage; footmen and pages, with torches in their hands, standing round; and the Duchess seated in his consulting-chair. Instead of making any apology, she thus addressed him: "Young man, if you mean to rise in the world, you must not sup out."

Another night, when, after the conclusion of a very long trial in which he had succeeded, he was indulging in agreeable conversation with Pope and Bolingbroke, Sarah again called, and, having in vain expected his return till past midnight, went away without seeing him. His clerk, giving him an account of this visit next morning, said to him, "I could not make out, sir, who she was, for she would not tell me her name; *but she swore so dreadfully that she must be a lady of quality!*"

He appears
at the bar
of the
House of
Commons
on the peti-
tion for a
war with
Spain.

Mr. Murray's growing celebrity procured him a retainer at the bar of the House of Commons as counsel for the merchants who, because they were interrupted in their smuggling adventures to the Spanish colonies, petitioned for a redress of imaginary grievances, and were trying, without any sufficient ground, to bring about a war between the two countries. On this occasion "every resource of oratory was applied to exaggerate the insults and cruelties of the Spaniards, and to brand as cowardice the minister's wise and honorable love of peace. It was asserted that the prisoners taken from English merchant vessels had been not merely plundered of their property, but tortured in their persons,

immured in dungeons, or compelled to work in the Spanish dockyards with scanty and loathsome food, their legs cramped with irons, and their bodies overrun with vermin."¹ To prove these outrages, Murray called as witnesses several captives and seamen; relying mainly on the famous Captain Jenkins, who stated that "a Spanish captain had torn off one of his ears, bidding him carry it to his King and tell his Majesty that if he were present he should be treated in the same manner;" and being asked what were his feelings when he found himself in the hands of such barbarians, answered (perhaps on the suggestion of the counsel), "I recommended my soul to God, and my cause to my country." War was soon after proclaimed amidst public rejoicings, while Walpole prophesied truly, "They may ring their bells now; before long they will be wringing their hands."²

Murray, since his altered fortunes, could enter on a matrimonial negotiation with entire confidence. He proposed to the Lady Elizabeth Finch, a daughter of the Earl of Winchelsea; and on the 20th of November, 1738, he led her to the altar. Their union was most auspicious. They had no offspring, but they lived together happily for near half a century; and his passion for CHLOE was only remembered by him to illustrate the maxim which he inculcated, that a first love may be succeeded by a second as pure and as ardent.³ Lady Mansfield, by the exemplary discharge of every domestic, social, and religious duty, made his home

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His marriage.
Nov. 20,
1738.

1. Lord Mahon, ii. 242.

2. Coxe's *Memoirs of Walpole*, i. 579, 618; Tindal, viii. 372; *Commons' Journals*, March 16, 1738.

3. Some of Lord Mansfield's biographers have supposed that the *Lady Elizabeth Finch* herself was the true CHLOE, and that, she remaining true, her family relented on the improved prospects of her lover; but, not only from the verses of Pope, but from other sources, it is quite certain that CHLOE did wed the *rich dulness* of a Lincolnshire squire, and that the Lady Elizabeth succeeded her in the affections of her Strephon.

CHAP. XXXI. delightful till the 10th of April, 1784, when he resigned her in the hope of being speedily reunited to her in a better world.

A. D. 1738—
1742.
The happiest portion of his existence.

The first four years after his marriage must have been the happiest portion of his existence. He was in the enviable situation of being at the head of the bar, without the anxiety or the envy which may be expected to attend the possession of office. Hope held out to him the most brilliant prospects of advancement, and, as yet, he thought there must be supreme felicity in gratified ambition.

Both parties in the state were eager to enlist him in their ranks. At this time there were very few professed Tories, and still fewer avowed Jacobites. Politicians struggling for power, almost all coming within the general denomination of Whigs, were divided into the adherents and the enemies of Sir Robert Walpole. Murray warily refused to join either the one class or the other. He had been counsel in a Chancery cause for the Duke of Newcastle, who, eager to secure the rising lawyer as a partisan, wrote the following letter to Lord Chancellor Hardwicke:

The Duke of Newcastle's letter to Lord Hardwicke suggesting Murray's appointment as King's Counsel.

"I cannot but think myself greatly indebted to Mr. Murray, who, from the great pains he has taken in the way of his profession, has singly procured the consent of all parties, without which I should not have been thoroughly easy. I should be glad to make him any proper return; and as promotions in the law are now stirring, might I submit it to your Lordship whether Mr. Murray might not be made one of the King's counsel? His ability nobody will doubt, and I will be answerable he shall do nothing unbecoming that station, or that shall reflect upon those who shall recommend him to it. You know, my dear Lord, the reason I ask this favor of you, and for him; and you must therefore know how greatly I shall be obliged to you if it can be granted, and that is all I shall say upon the occasion."

The Duke, however, in his peculiar fashion, annexed certain conditions to this favor, which were

rejected, and Murray continued to lead the bar in a stuff gown till he was made Solicitor General. At last the veteran minister, after having for twenty years distributed the patronage of the Crown, was now so hard pressed that his fall was deemed inevitable; but there was no concert among his heterogeneous opponents to form a government to succeed him, and there would have been no prudence in joining any section of them. Murray pretended to be guided by the sentiment of Pope, that "the man who may have the goodwill of all parties is guilty of folly if he becomes a partisan." However, when the crash was over, and, Pulteney, to the surprise of all mankind, declining to take office, the Duke of Newcastle, Pelham, and Hardwicke seemed firmly seated in power, the shrewd Scot did not hesitate to declare that he thought they were entitled to the support of enlightened statesmen. His own father-in-law, the Earl of Winchelsea, had become First Lord of the Admiralty, and was a member of the new Cabinet. His friendly opinion of Mr. Murray was made known in the proper quarter, and there was a warm desire to take him as soon as possible into the service of the Crown.

February.
After the
fall of Sir
Robert
Walpole,
Murray
attaches
himself to
the Pel-
hams.

But he spurned the notion of any political appointment, and there was a difficulty in bringing about a vacancy in the office of Attorney or Solicitor General, as neither of the present law officers could be uncere- moniously removed, and the existing occupants of the chiefships in Westminster Hall seemed hale and hearty. In the course of a few months Sir John Strange,¹ the Solicitor General, whose health had

1. John Strange was the son and heir of John Strange, of Fleet Street. He was for some time a pupil of Mr. Salkeld, of Brooke Street, Holborn, the attorney in whose chambers Lord Hardwicke had before had a seat, and was called to the bar by the Middle Temple in 1718. He acted as junior counsel for the Crown in 1722 and for several years after, and in 1725 he was engaged for the defence in the impeachment of the Earl of

CHAP. failed him, was induced contentedly to resign, on a
XXXI. promise of being made Master of the Rolls. Mr.
November. Murray was installed as his successor, and immediately
He is made Solicitor General. after was returned to the House of Commons, in his
stead, for Boroughbridge, one of the many seats in the
gift of the Duke of Newcastle.¹

Macclesfield, the result of which, notwithstanding the able advocacy of himself and his colleagues, was so disastrous to his noble client. His Reports, which were not published till after his death, were commenced in Trinity Term 1729. He was appointed King's Counsel in February, 1736, when he was called to the bench of his inn, and elected Autumn Reader in the following year. In the previous Hilary Term he became Solicitor General, and was elected member for West Looe, commencing his senatorial career by a long speech against the provost and city of Edinburgh arising out of the murder of Captain Porteus. In November, 1739, he was elected Recorder of London, and in the next year he received the honor of knighthood. To the surprise of Westminster Hall, he resigned his two offices in November, 1742, and in his Reports (p. 1176) thus accounts for his retirement: "Memorandum.—Having received a considerable addition to my fortune, and some degree of ease and retirement being judged proper for my health, I this term resigned my offices of Solicitor General, King's Counsel, and Recorder of the City of London, and left off my practice at the House of Lords, Council Table, Delegates, and all the courts in Westminster Hall except the King's Bench, and there also at the afternoon sittings. His Majesty, when at a private audience I took my leave of him, expressed himself with the greatest goodness towards me, and honored me with his patent to take place for life next to his Attorney General. *Anno aetatis meae 47.*" His last promotion was on Jan. 11, 1750, when he was selected to supply the vacancy in the office of Master of the Rolls. After enjoying it for about four years, he died on May 18, 1754, and was buried in the Rolls Chapel. He continued in Parliament till his death, representing Totnes since 1741. Five years after his decease his son published his Reports in all the four courts, extending from 1729 to 1748, which were considered of so much value as to require three subsequent editions. He enjoyed the esteem and friendship of Lord Hardwicke; and the Duke of Newcastle on his death speaks of him as "one whom he honoured and loved extremely for his many excellent publick qualities and most amiable private ones." He adds, "I scarce know any man with whom I had so little acquaintance that I should more regret."—*Foss's Lives of the Judges.*

1. At the same time he was elected a Bencher of Lincoln's Inn:

"At a Council held the 29th day of November, 1742.

"Ordered,—That the Hon. William Murray, Esq., His Majesty's Solicitor General, be invited to the Bench of this Society; and that Mr. Attorney General and Mr. Browne, two of the Masters of the Bench, are desired to attend him with this order, and report his answer to the next Council; and if the said Mr. Murray do accept of this invitation, he is,

The very honorable feelings which filled his mind on his promotion are well expressed in the following letter from him to Mr. Grant, an eminent advocate at the Scotch bar, who had lately been deprived of the office of Lord Advocate, but was afterwards made a Judge by the title of Lord Prestongrange :

“ Dear Sir,—Give me leave to acknowledge your very oblig-
ing letter ; your partiality flatters me, extreamly ; because I am
persuaded it proceeds from good will ; and there is nothing I
covet so much as the good will of those I value and esteem.
The office I have accepted came unasked, and recommended by
many circumstances to make it agreeable, else I cou’d have liked
very well to continue as I was ; my ambition is not so much to
aspire to high things, as to act my part, whatever it is, as well as
I can. In my way of thinking, I cannot condole with you upon
the loss of that office to which you did honour while you filled
it, tho’ I was heartily concerned when I heard of it ; I cou’d
condole with those who took it from you ; the enjoyment of it
cou’d not add much to your figure or character, the loss of it
can take nothing from either ; and I am convinced that in mak-
ing the change no part of the motive was personal to you. It is
to God and yourself that you owe being at the head of your pro-
fession, which, in my opinion, is the highest object of ambition.
This situation no power can give or take away. That you may
long enjoy it in spirits and health is the sincere wish of

“ Dear sir,

“ Your most ob: hu: serv^t.

“ W. MURRAY.

“ Lincoln’s Inn, 18th Dec. 1742.”

according to the rules of this Society, to pay all his arrears and duties to the Treasurer of this Society before he be published to the Bench.”

“ At a Council held the 15th day of December, 1742.

“ Upon the Report of Mr. Attorney General, who, with Mr. Browne, was, by order of the last Council, desired to attend the Hon. William Murray, Esq., His Majesty’s Solicitor General, with an invitation to the Bench, that he, together with Mr. Browne, had attended the said Mr. Murray, who had accepted of the said invitation,—it is Ordered, that the said Mr. Murray be called to be a Bencher of this Society, and that he be published at the next Exercise in the Hall, he having paid all his arrears and duties to this Society.”

He was Treasurer the following year.

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XXXI.
His feel-
ings on his
promotion.

Dec. 18,
1742.
His letter
to Mr.
Grant.

CHAP.
XXXI.
His private
life.

Before we see the new Solicitor tossed about on the stormy ocean of politics, on the margin of which he now stood, let us try to catch a glimpse of him in private life. He had taken a handsome house in Lincoln's Inn Fields, then the haunt not only of prosperous lawyers but of ministers of state.¹ Here he received his professional friends, whom he entertained with elegant hospitality and genuine kindness. One of these whom he most loved was Mr. Booth, afterwards celebrated as a conveyancer, but at this time very much disheartened by the small success he met with in the department of the profession which he had chosen. The following letter, written to cheer and encourage him, shows Murray to have had a warmth of heart for which he has not had sufficient credit :

His
friendly
letter to
Booth the
convey-
ancer.

"My dear Friend,—I received yours last night. I cannot but applaud the protection you give a sister, whom I know you love tenderly ; yet it seems a little rash to carry your beneficence so far as to dry up the source of all future generosity ; and I am sure it is greatly against the interest of every one who has the least dependence upon you, that you should do anything which makes it at all difficult for you to persevere in a way where you

1. Lincoln's Inn Fields, "perplexed and troublous valley of the shadow of the Law," as Dickens calls it, is still the largest and shadiest square in London, and was laid out by Inigo Jones. Its dimensions have been erroneously stated to be the same as those of the Great Pyramid, which are much larger. The square was only railed off in 1735, and till then bore a very evil reputation. It was here (Sept. 10 and 21, 1586) that Babington and other conspirators for Mary Queen of Scots were "hanged, bowelled, and quartered, even in the place where they used to meet and confer of their traitorous purposes." Here, also, the brave and upright William Lord Russell unjustly suffered for alleged high treason, attended by Tillotson and Burnet on the scaffold. . . . At the northwestern corner of Lincoln's Inn Fields is Newcastle House (with a double staircase to its entrance), built in 1686 by the Marquis of Powis, who followed James II. into exile, and was created Duke of Powis by him. It was inhabited by the insignificant Prime Minister of George II.'s reign, the Duke of Newcastle, of whom Lord Wilmington said, "He loses half an hour every morning, and runs after it all the rest of the day, without being able to overtake it." Now it is occupied by the Society for the Promotion of Christian Knowledge.—*Hare's Walks in London.*

must at last succeed. Of this I have no doubt ; and, therefore, it is as superfluous to add my advice for your coming to town immediately, as it would be to tell you that I omit no opportunity of mentioning your name, and promoting your interest. You cannot fail but by staying in the country, and suffering people who have not half your merit to step in before you. With regard to everything you say of Mr. Pigot, we will talk more at large hereafter ; I as little think he will bring you into his business while he lives as that you can be kept out of a great part of it when he dies. I am at present consulted upon a devise-settlement of his, whereby a great estate is left to a noble Roman Catholic family—which I am very clear is good for nothing. Can you contrive a way by which an estate may be left to a Papist ? Though I have no more doubt of the case put to me than whether the sun shines at noon, I told the gentleman who consulted me I would willingly stay to talk with a Roman Catholic conveyancer, whom I expected soon in town, and named you to him.

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His letter
to Booth,
continued.

“I own I am desirous you should come to town ; and be assured the best service you can do your friends is to put yourself in a way to serve them effectually. As to any present occasions you have, you know where to command when I have a shilling. *Nil mihi rescribas, attamen ipse veni.* I am, I do assure you, with great cordiality and esteem,

“Dear Booth,

“Your affectionate friend and faithful servant,

“W. MURRAY.”

To show his amiable disposition and recollection of favors received, I may here introduce two letters written by him to Lord Milton, a Judge of the Court of Session in Scotland, from whom he had received much kindness when a boy :

“My dear Lord,—To come at once to the business of my letter, and without a preface. I have lately been engaged before my Lord Chancellor in a question for the Dean and Chapter of Christ Church College in Oxford, of which your Lordship knows I was, till very lately, a member. It was a point about which they were very anxious ; and I happened to speak in it so much to their satisfaction that they have thought themselves obliged to make a particular acknowledgment of it, and the

Letters
from him
to Lord
Milton, the
Scotch
Judge.
Feb. 2,
1737-8.

CHAP.
XXXI.
Letters
from him
to Lord
Milton,
continued.

manner in which they have done it is very well judged; they have offered me the nomination of a student, who is there the same as a fellow of another college. There go four ev'ry year from Westminster School, and the other vacancies are filled by the Dean and Canons. The thing is extreamly creditable; and they may be upon a foot with any gentleman of the place at a much less expence. From the College they have chambers commons and about 20*l.* a year, which encreases according to their standing. There are other advantages afterwards to those who reside there and take orders.

"I did not refuse the offer made me of this nomination; and immediately resolved to propose it to my Lady Milton and you. My nephews are too young; and besides, I intend, if they are educated in this country, that they shall go thro' Westminster College. I find your Lordship has a son at Winchester School about sixteen years of age, but I fear he is your oldest son, and therefore it will not be of the same service to him that it wou'd be to a younger son. I am told that the next you do not intend for a learned profession, but for the army. However, it may be worth your while to consider whether you will accept of it for your eldest son; if you intend to breed him to a profession in this country, and to give him an university education. If you propose to send him to the University here for a year or two only, and then abroad to study the civil law, and travel, and so home, this certainly don't deserve to be thought of, and is by no means advisable; and I suspect this so much to be your plan, and it is a very reasonable one, that when I found upon enquiry you had no younger son whom this would suit, I doubted whether I shou'd propose this to you at all; but a friend of yours, from whom I learnt the state of your family, desired I wou'd, that you might judge for yourself. There is no haste in determining, because it will be a considerable time before the place falls. I desire my compliments to my Lady. I need not tell you the pleasure it wou'd give me to be serviceable to your family in any respect. This is the first thing in my power that has offered, and, whether it suits or not, I have the pleasure of giving this small mark that I am, my Lord,

"Your Lop's most obliged and obedt. hu: serv^t

"W. MURRAY.

"Lincoln's Inn, 2d Feb." (1737-8.)

Jan. 11,
1738-9.

"My dear Lord,—The accounts I have lately heard of your

Lops health have giv'n me great pain ; and I have often been tempted to write to Lady Milton to enquire after you, but I was afraid it might be too tender a subject to apply to her upon. I called yesterday upon L^d Isla to talk with him about your son's education. I am glad to find he thinks the offer which fortune put it in my power to make you last year is so advantageous to him as not to leave room for deliberation; tho' he has some prejudices, and perhaps too well founded, to many things in our Universitys; I know the good and the bad of them very well; and upon the whole am very clear that you cannot dispose of him in any other way so well, and it will interfere with no scheme which you can have hereafter. I am too much pressed at present to give you my reasons, and I only write this to tell you that my L^d and I agree he shou'd go to Christ Church in Oxford. The time when, and everything else in relation to fixing him there, I will take the trouble of directing, and likewise recommend him to proper company, and put him under the best care I can. I desire my compliments to my Lady, and am with great truth,

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"Your Lop's most ob: hu: serv^t

"W. MURRAY.

"Lincoln's Inn, 11 Jan. 1738-9.

"I don't at all know what progress he has made at school, but he seems to me a very pretty youth."

The new Solicitor General and M.P. found a mortifying difficulty in keeping up the intercourse he wished with his literary associates; and Pope, when publishing a new edition of the DUNCIAD, introduced him (although with respect and tenderness) among those who from their classical attainments and their genius might have gained high intellectual distinction, but who had sunk into lawyers and politicians:

Regret of
Pope that
Murray
had abandoned the
Muses or
law and
politics.

"We ply the memory, we load the brain,
Bind rebel wit, and double chain on chain;
Confine the thought to exercise the breath,
And keep them in the pale of words till death.
Whate'er the talents, or howe'er design'd,
We hang one jingling padlock on the mind:
A poet the first day he dips his quill;
And what the last?—a very poet still.

Extract
from the
"Dun-
ciad."

CHAP.
XXXI.

Pity ! the charm works only in our wall,
Lost—too soon lost—in yonder house or hall.
There truant Wyndham ev'ry muse gave o'er ;
There Talbot sank, and was a wit no more !
How sweet an Ovid, MURRAY, was our boast !¹
How many Martials were in Pulteney lost !"

Notwithstanding such lamentations, the intimacy between the two illustrious friends continued without abatement. Pope was often in the habit of spending his winter evenings in the library of Murray's house in Lincoln's Inn Fields.

Verses
written by
Pope in
Murray's
chambers.

It is related that on one occasion the rising lawyer, being called away to a consultation, put into the poet's hand a volume of Latin Epitaphs, lately published by Dr. Friend, head master of Westminster, saying that they had been much read and admired. Pope, who, like other great men, felt unnecessary jealousy of a supposed rival, was alarmed lest his own fame in epitaph-writing, on which he particularly valued himself, should be dimmed ; and on Murray's return showed him the following epigram :

" *Friend !* for your epitaphs I'm grieved :
Where still so much is said,
One half will never be believed,
The other never read."

The old Westminster, although a little hurt that his preceptor should be so slighted, acknowledged that the lines were smart, and, with permission, took a copy of them. But next night, Pope having produced a Latin epitaph of his own composition, which he maintained to be equal to any of Friend's, Murray, detecting a false quantity in it, threw it in the fire, saying

1. From this compliment, I suspect that the beauty of CHLOE or some other charmer had been celebrated by Murray in verses which have not reached us. It is rather surprising that Murray's name is not introduced with Wyndham's, St. John's, and Marchmont's, in the verses on Pope's Grotto at Twickenham ; but perhaps it did not aptly fall into any couplet. On such considerations do the praises and censures bestowed by poets sometimes depend.

“that the finest of English poets, and he who had most embellished his own language, ought to write in no other.” The distinction conferred on a young lawyer by such an intimacy is more to be envied than Chief Justiceships and Earldoms.

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Pope, a few days before his death, when much debilitated in body, was, at his own desire, carried from Twickenham to dine with Murray in Lincoln's Inn Fields. The only other guests invited were Bolingbroke and Warburton. O for a Boswell to have given us their conversation! But, perhaps, it is better that their confidence has not been betrayed, for, amidst the gratification arising from their lively sallies, we might have found Bolingbroke scoffing at religion,—Warburton irreverently anathematizing all who differed with him on questions of criticism,—Pope vindicating himself from the charge of Roman Catholic bigotry by denying Divine revelation,—and Murray softening the misconduct of those who had been, or were, in the service of the Pretender, by admitting that he himself had had a strong hankering after the doctrine of the divine right of kings.

A.D. 1744.
Their later
meetings.

Some expected that Murray, having been treated by Pope as a son, would have been named his heir; but he was himself amply satisfied with the proof of the continued regard he experienced in being appointed his executor, and being legatee of a marble bust of Homer by Bernini, and another of Sir Isaac Newton by Guelfi. He had received before, what he valued beyond all his possessions, a portrait of Betterton, the actor, drawn by Pope himself, who, it is well known, thought he was born to excel by the pencil as well as by the pen.

Murray
appointed
Pope's
executor.

CHAPTER XXXII.

CONTINUATION OF THE LIFE OF LORD MANSFIELD
TILL HE WAS MADE ATTORNEY GENERAL.

CHAP.
XXXII.
A.D. 1742,
1743.
Murray's
brilliant
success in
the House
of Com-
mons.

IT has often happened that a lawyer, with great reputation at the bar, has lamentably failed on coming into the House of Commons; but Murray, as a parliamentary debater, was still more applauded than when pleading as an advocate. Now he reaped the reward of long years of study, by which he cultivated and perfected the high qualifications for oratory which he had received from nature. The first time he opened his mouth in the House of Commons he seems to have had the most brilliant success; and, during the fourteen years he remained a member of that assembly, as often as he mixed in the debate he was listened to with favor.

Pitt his
rival.

His chief antagonist was William Pitt, who had entered parliament two years before him, as member for Old Sarum,¹ and had made himself most formidable by an uncompromising hostility to all the measures of the Government, and by an energy of declamation and a power of invective hitherto unexampled in the annals

1. Old Sarum, the largest entrenched camp in the kingdom, once the site of a Roman fort, and afterwards of a Saxon town, stands on a high mound affording an admirable view of Salisbury. The cathedral, removed to Salisbury in 1258, originally stood here, and a fragment of the old building still remains. The "Ordinal of Offices for the Use of Sarum" became the ritual of all south England. At the neighbouring village of Stratford is a house once inhabited by the elder Pitt, who was first returned to parliament in 1735 as member for the rotten borough of Old Sarum.—*Baedeker's Gt. Brit.* p. 101.

of English eloquence. The great patriot was already compared to a mighty torrent which, with irresistible fury, carries away before it every obstacle that it encounters, spreading consternation and ruin through the country which it overwhelms.

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Murray, unless on some very rare occasions, was found to be his match.¹ The mellifluous tones,—the conciliatory manner,—the elegant action,—the lucid reasoning,—the varied stores of knowledge,—the polished diction,—the alternate appeals to the understanding and the affections,—the constant self-control,—which distinguished the new aspirant, divided the suffrages of the public. Even the worshippers of Pitt admitted that Murray was justly entitled to the complimentary quotation from *Denham*,² which his friends applied to him,³—

1. "He surpassed Pitt," says Macaulay, "in correctness of taste, in power of reasoning, in depth and variety of knowledge; but he wanted the energy, the courage, the all-grasping and all-risking ambition which make men great in stirring times."—*Review of the Life of the Earl of Chatham*.

2. Sir John Denham, an English poet. He was born in 1615 at Dublin, where his father was chief baron of the Exchequer but afterwards became a judge in England. In 1631 he was sent to Trinity College, Oxford, from whence he went to Lincoln's Inn, but he made little or no progress in the law. In 1641 appeared his tragedy of "Sophy," and soon after he was made governor of Fareham Castle for the king. In 1643 he published at Oxford his "Cooper's Hill," the best of all his works. He attended Charles II. in his exile, and was sent by him ambassador to Poland in conjunction with Lord Croft. He afterwards returned to England, where he was entertained by Lord Pembroke. At the Restoration he was appointed surveyor-general of the royal buildings, and at the coronation he was created knight of the Bath. He died in March, 1668, and was buried in Westminster Abbey. His "Cooper's Hill" is the only poem of his writing that will now bear a perusal. Dr. Johnson says of Denham, with reference to this poem, that "he seems to have been, at least among us, the author of a species of composition that may be denominated local poetry, of which the fundamental subject is some particular landscape, to be poetically described, with the addition of such embellishments as may be supplied by historical retrospect or incidental meditation."—*Cooper's Biog. Dict.*

3. Lines on the Thames.

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"Though deep, yet clear; though gentle, yet not dull;
Strong, without rage; without o'erflowing, full."¹

Dec. 6,
1743.

The subject of agitation then was the taking of 16,000 Hanoverian troops into British pay. Pitt, heading the discontented Whigs, and backed by the Tories and Jacobites, denounced this act as illegal, unconstitutional, a sacrifice of British to Electoral interests, and a prelude to the introduction of despotism into this country,—and he brought forward a motion for an address to the Crown, praying that these troops should be dismissed.²

The duty of the Solicitor General of that day in the House of Commons was not confined to answering a legal question, or introducing a bill to reform the practice of the courts. The brunt of this debate chiefly fell upon him. From defective reporting, we can form a very inadequate notion of his speech; but I will give a few extracts from it. Thus he began:—

Murray's
speech on
the em-
ployment
of Hano-
verian
troops.

"Sir, the motion now under our consideration is of such a new and extraordinary nature, and is such a direct attack on the just prerogative of the Crown, that I should think myself very little deserving of the honour which his Majesty has been pleased to confer upon me if I did not rise to oppose it. There are certain powers vested in the King, as there are certain privileges belonging to the people, and an infringement of either would lead to the overthrow of our happy constitution. As the guardians of the liberties of the people, we are bound

1. Perhaps the reader may be more amused by the description of his eloquence by his principal biographer.—"he was *perspicuous* without *constraint*, *mellifluous* without *exuberance*, and *convincing* without *ostentation*" (Holliday, p. 54).—although one does not see at first sight how the vice of which he is acquitted is an excess of the good quality for which he is praised.

2. The king had in his pay six thousand Hessian soldiers, when the cabinet proposed the raising of these Hanoverian troops. "It is only too evident," said Pitt, "that this great, powerful, and formidable kingdom is considered as the province of a miserable electorate, and that these troops are only being raised in execution of a long-deliberated scheme to absorb the resources of our unfortunate country."—*Guizot's History of England*, vol. iii. c. xxxv. p. 245.

to respect the royal prerogative. But if there be anything certain it is this,—that to the King alone it belongs not only to declare war, but to determine how the war, when declared, shall be carried on. He is to direct what forces are to be raised; when armies are to march; when squadrons are to sail; when his commanders are to act, and when they are to keep upon the defensive. If this motion were carried, I should expect to see a venerable member moving an address that a general engagement shall be immediately ordered in Flanders, although the mover has never been out of England, 'nor the division of a battle knows more than a spinster.' He then takes an enlarged view of the state of Europe, and particularly of the affairs of the Queen of Hungary; and, having shown that the most effectual mode of assisting her, and of baffling the attempts of France, was to send an army into Flanders, thus continues:—"On every side the most happy effects have been produced by the method his Majesty has chosen for assisting the Queen of Hungary.¹ I hope it will not be said that we ought to assist her with our own troops alone. To raise by recruiting at home the army which would be necessary, must be injurious to our industry and injurious to our constitution. We must therefore have foreign troops in our pay, and where shall we find any to be preferred to the Hanoverians?" He next goes on to vindicate his Majesty's countrymen from the false charges of cowardice and insubor-

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1. Maria Theresa, archduchess of Austria, queen of Hungary and Bohemia, and empress of Germany, was the daughter of the emperor Charles VI. of Austria by his wife Elizabeth Christina of Brunswick-Wolfenbüttel, and was born in Vienna on May 13, 1717. By the Pragmatic Sanction of 1713, a settlement which was guaranteed by the principal states of Europe, her father had regulated the succession in the imperial family; and in 1724, accordingly, after the death of the archduke Leopold, her only brother, she was publicly declared sole heiress of the Austrian dominions. In 1736 she married Francis Stephen of Lorraine, who in the following year became grand duke of Tuscany; and on October 20, 1740, she came to the throne, her husband (emperor in 1745) being declared co-regent. She died at Vienna on November 29, 1780. Of sixteen children whom she bore to Francis, ten reached maturity. Her sons were Joseph II., who succeeded his father as Holy Roman emperor in 1765; Leopold, grand duke of Tuscany, afterwards the emperor Leopold II.; Ferdinand, duke of Modena; and Maximilian, elector of Cologne. Of her daughters the best-known is Marie Antoinette, the wife of Louis XVI. of France.—*Encyc. Britannica*, vol. xv. p. 539.

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dination, which, to spite him, were circulated against them ; and to show that no improper partiality had ever been shown for them in preference to British troops. Thus he concludes : — "I will not say, sir, that upon no occasion would this House interfere with its advice as to the exercise of the prerogatives of the Crown. If wicked or incapable ministers were bringing disgrace on the British arms, degrading the national honour, and hazarding the national safety, we might be called upon to advise the King to change his measures and his advisers. But our allies have been effectually protected, and the interests of England, in every part of the world, have been vindicated. It is insinuated, indeed, that all our measures are secretly calculated for the benefit of the Electorate of Hanover. This is an insinuation of a most dangerous nature, and it ought not to be resorted to for mere party purposes, because it tends not only to wean the affections of the people from the sovereign on the throne, but from the Protestant succession in the Hanover line, and to bring about a counter-revolution which would be fatal to religion and liberty. Whether the republican faction, or Jacobitish faction, which are now united, shall prevail when the split comes, destruction alike awaits constitutional freedom. What ground is for the charge ? I do not pretend to be in the secrets of the Cabinet, and I am unable to dive into the hidden recesses of the human mind to analyse the true motives of action ; but when the measures of the Government are wisely calculated to promote the dignity and prosperity of England, and have actually produced the happy results which might have been expected from them, why should you say that their hidden and sole object is to enrich Hanover and to add a few patches to its territory ?"

The motion was negatived by a majority of 231 to 181, and Murray became a special favorite with George II., who highly valued his services,—although he sometimes believed him to be a convert from Jacobitism, and sometimes suspected his sincerity.¹

The office of Attorney General was held by Sir Dudley Ryder, a sensible man and a good lawyer, but unfit for anything beyond the limits of professional duty ;

1. 13 Parl. Hist. 143, 246-274.

while Mr. Solicitor General Murray might henceforth be considered the Government leader in the House of Commons. For this office he had the very convenient privilege of professing, when it suited his purpose, entire ignorance of ministerial secrets. Without being formally a member of the Cabinet, it is quite clear that he was a party to its most important deliberations and decisions. Yet he would thus begin a speech on the policy of entering into a treaty with a continental state to prosecute the war:—"The post in which I have the honor to serve his Majesty has no concern with foreign affairs; and as I am not so unreasonable as to expect, much less desire, that ministers should communicate to me those secrets which the duty of their office requires them to conceal, I can know nothing of foreign affairs beyond what I learn from the public gazettes or papers laid before this House and accessible to every member. I know enough, nevertheless, to enable me confidently to oppose this motion, and easily to show its inexpediency." He then took a masterly view of the diplomatic relations of this country with the different courts of Europe, speaking hypothetically where direct assertion was incommodious.¹

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Murray
the prop of
the Admin-
istration
in the
House of
Commons.

Nay, the Government actually depended upon him for vindicating the manner in which the war was conducted by England and her allies, and for meeting such questions as whether the allied powers could best make an impression on France by mustering their forces in Flanders or on the Rhine.² But these discussions, which, while they were going on, were declared, and perhaps believed, to be the most important which had ever occurred in the annals of Great Britain, led to no memorable result, and have now lost all their interest.

The connection between England and the Elector-

1. 13 Parl. Hist. 143, 246, 384, 407.

2. Ibid. 396.

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ate of Hanover, which was the great topic of patriotic declamation and ground of popular discontent, has fortunately forever ceased by the auspicious operation of the law of descent. The supposed grievances arising from this connection were powerfully urged by Pitt and Littleton,¹ who at last actually brought forward a resolution "that no prince holding foreign dominions should be qualified to fill the throne of Great Britain ;" intimating that Hanover might be transferred to a younger branch of the House of Brunswick,—if the King, from his extreme and notorious partiality for it, should not choose it for himself.

Murray, in answer, dwelt on the impolicy of proposing a measure which we had no means of carrying ; for if it met the approbation of the Parliament of England, it might be rejected by the Diet of the Germanic Empire. He conjured all lovers of constitutional freedom to rest satisfied with the *Act of Settlement*,² which contemplated the possession of foreign dominions by the prince called to the British throne, and, recognizing this arrangement, anxiously and effectually guarded

1. Lord George Lyttleton or Lyttelton, son of Sir Thomas Lyttleton, and a descendant of the great jurist Thomas Littleton or Lyttleton, was born at Hagley, in Worcestershire, in 1709. He entered parliament about 1730, was afterwards secretary to Frederick, Prince of Wales, and in 1744 was appointed a lord of the treasury. He was chancellor of the exchequer for several months in 1756, resigning that office when Pitt became prime minister. In 1759 he was created Baron Lyttleton. He died at Hagley in 1773.—*Thomas' Biog. Dict.* ; *Century Dict. of Proper Names*.

2. The Act of Settlement, or the " Act for the further limitation of the crown and better securing the rights and liberties of the subject " (12 and 13 Wm. III., c. 2), was passed in 1701, on the untimely death of the young Duke of Gloucester, son of the Princess Anne. It contained eight articles, the second of which was : " That in case the crown and imperial dignity of this realm shall hereafter come to any person not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of England, without the consent of parliament." This provision was frequently called in question during the reign of George II.—*Dict. Eng. Hist.*

against all the inconveniences which it might by possibility occasion. He then tried to show that the complaints made on this subject by Tory fox-hunters and discontented aspirants to place, were to be ascribed to prejudice or calumny. Pitt thus began his reply:—
 “Not all the sophistry of the honorable and learned gentleman shall make me recede from the true point in debate, which is not at all affected by any one of his arguments.”¹ But we shall find passages of arms between these champions more worthy of our regard.

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We approach the rebellion of 1745, which ever must be interesting to the inhabitants of this island. An event had very nearly taken place which would have entirely changed our destiny, and might have had a material influence upon the history of Europe—the restoration of the Stuarts to the throne of their ancestors.

Rebellion
of 1745.

Murray must have viewed the struggle with divided feelings. He had cast in his lot with the new dynasty; but his second brother, whom he dearly loved, had been twenty years in the service of the Pretender, had been created by him Earl of Dunbar, and was supposed to be his destined prime minister. Whether or not Mr. Solicitor himself had ever drunk on his knees to “the King over the water,” all his early associations must have led him to doubt the title of the reigning family; and, if the will of the people were to prevail, he saw the church and landed aristocracy in favor of a restoration, while the middle and lower orders testified perfect indifference as to the success of the old dynasty or the new.²

Whichever way he might be drawn by his inclination, he was governed by a sense of duty; and, remembering the oaths he had sworn, he strictly preserved his

1. 13 Parl. Hist. 467-473.

2. According to old Horace Walpole, they cried “Fight dog, fight bear.”

CHAP. allegiance to King George, and used his best endeavors
XXXII. to frustrate the hopes of the Jacobites.

February, A message being brought down from the King, an-
1745. nouncing the meditated attempt by Prince Charles
Suspension of the Habeas Corpus Act. Edward,¹ the Solicitor General zealously supported

1. Charles Edward Stuart, known as the Young Pretender (*b.* 1720, *d.* 1788), was the son of James Edward Stuart and Clementina, granddaughter of John Sobieski, King of Poland. He was born at Rome. His education was very much neglected. He became of political importance on the renewal of the hostility between England and France after the fall of Walpole. Cardinal Tencin, the French minister, was in favor of an invasion of England, and in 1743 Charles came to Paris. Louis XV., although he refused to see him, was not unfriendly to his cause; 15,000 veterans under Marshal Saxe were stationed at Dunkirk, while fleets were collected at Brest and Toulon. But the French admiral, Roquefeuille, feared to attack the English under Sir John Norris; his ships were dispersed by a storm, and the French ministry, abandoning the design, appointed Saxe to command in Flanders. The Pretender retired to Paris, whence he communicated with his Scotch adherents through Murray of Broughton. The results of the battle of Fontenoy (1745) caused him to hasten his plans. He embarked at Nantes (1745) in a privateer, attended by a French man-of-war, but the latter vessel was attacked and disabled by an English ship, so that Charles arrived in Scotland stripped of supplies, and with only seven companions. [JACOBITES.] After the battle of Culloden Charles fled, and succeeded, after five months' wanderings in the Hebrides, in escaping to France. He owed his life to Flora Macdonald. On his return to Paris he found that no more help was to be expected from the French court. On one occasion Tencin proposed that he should be supplied with French troops on condition that in the event of his success, Ireland should be given to Louis. Charles replied, "Non, M. le Cardinal, tout ou rien, point de partage." In 1747 he went to Spain, and in 1748 to Prussia, to try and get assistance, but without success. He quarrelled with his father and brother when the latter became a cardinal. He was compelled to leave France by the conditions of the Treaty of Aix-la-Chapelle, but he obstinately refused to go, and was imprisoned. He resided chiefly after this with his friend, the Duc de Bouillon, in the forest of Ardennes. In 1750, and perhaps in 1753, he paid mysterious visits to England. On the death of his father he repaired to Rome. His character had become degraded; his former chivalrous promise had quite vanished, he was a confirmed drunkard, and his friends were alienated by his refusal to dismiss his mistress, Miss Walkinshaw, who it was said betrayed his plans. In 1772 he married Princess Louisa of Stolberg, a girl of twenty, but the union was unhappy, and she eloped with Alfieri. His adherents had sent him proposals that year of setting up his standard in America. "The abilities of Prince Charles," says Lord Stanhope,

the bill for suspending the Habeas Corpus Act,¹ against George Grenville,² who, though a sober-minded man, and well affected to the *Protestant succession*,³ was so far blinded by faction as to assert that "the threatened invasion was a mere contrivance of ministers to prolong their own rule." Murray made a very temperate and effective speech, showing that, since the Revolution, the same power had been asked by successive governments nine times over, and that on none of those occasions did there exist such a strong necessity for empowering the government to arrest and detain those who were well known to be guilty of treason, although there might not be legal evidence upon which they could be brought to an immediate trial.⁴

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It would have been curious to read a diary sincerely written by him, from the time when news arrived of the landing of the young Pretender in Moidart till

"I may observe, stood in direct contrast to his father's. No man could express himself with more clearness and elegance than James . . . but on the other hand his conduct was always deficient in energy and enterprise. Charles was no penman; while in action, he was superior. His quick intelligence, his promptness of decision, his contempt of danger, are recorded on unquestionable testimony. Another quality of Charles's mind was great firmness of resolution, which pride and sorrow afterwards hardened into sullen obstinacy."—*Dict. of Eng. Hist.*

1. The Habeas Corpus Act was suspended in England nine times between the Revolution of 1688 and the year 1745, and again at the time of the French Revolution between 1794 and 1800. It will be recalled by American readers that the Act was suspended in the United States during our Civil War.

2. George Grenville (1712–1770), a distinguished English statesman and the reputed author of the American Stamp Act, was a younger brother of Richard, Earl Temple, and brother-in-law of the elder Pitt. He became ministerial leader of the Commons in 1762, having been treasurer of the navy for some years previous. In 1763 the prime minister, Lord Bute, resigned, and Grenville succeeded him as first lord of the treasury and chancellor of the exchequer, from which post he was dismissed by the king, who hated him, in July, 1765, when the Marquis of Rockingham became premier.—*Thomas' Biog. Dict.*

3. Insured by the Act of Settlement of 1701.

4. 13 Parl. Hist. 671.

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news arrived of his flight after the battle of Culloden. Murray's correspondence with his mother during the same period would be still more curious; for the good old lady, who never in all her life prayed for King George, made no secret of her good wishes for King James, and was said actually to have assisted the rebels with provisions as they passed through Perth. But no such stories of private information are open to us. Even in public records Murray's name is not again mentioned till the Georgian cause had completely triumphed; and the "rebel Lords"—who, if they had succeeded in their enterprise, being made Dukes and Knights of the Garter, would have been celebrated for their loyalty in all succeeding ages—were to be prosecuted for joining in an "unnatural rebellion"; were to receive sentence to be hanged, beheaded, and quartered; and were to die with the reflection that their estates and titles were forfeited, and that their children were reduced to beggary and disgrace.

Murray
prosecutes
the rebel
Lords.

It must have been a painful task for Murray to take an active part in these prosecutions, for the prisoners were connected with his family by blood or alliance; but he did his duty with firmness and moderation, neither seeking to blunt the edge of the law out of favor to the accused, nor to make it cut with undue sharpness that he might avoid the charge of partiality.

Lords Kilmarnock, Cromarty, and Balmerino being tried before the House of Peers and a Lord High Steward, on bills of indictment against them found by an English grand jury for overt acts of treason committed in the siege of Carlisle,¹ he appeared against

1. Carlisle was probably a Roman station, and has been identified with Luguvalium in the Itinerary of Antoninus, from which, indeed, the name has been derived—Caer-Luel. The town was sacked by the Danes in 875, and rebuilt with a strong castle by William Rufus. It was held by the Scots during their tenure of Cumberland, and the beginning of the great church of St. Mary's is attributed to David

them as one of the counsel for the Crown. With the first two he had little trouble, for they both pleaded GUILTY and prayed for mercy. Lord Balmerino pleaded NOT GUILTY, and relied upon two objections:

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Trial of
Lord Bal-
merino.

1. "That in the indictment he was designated 'John, Lord Balmerino, late of the city of Carlisle, in the county of Cumberland,' whereas his true title was 'John, Lord Balmerino, of Balmerino, in the county of Fife;'" and 2. "That he was indicted for the taking of his Majesty's city of Carlisle on the 11th of November, in the year of our Lord 1745; whereas he could prove that during the whole of that day he was at least twenty miles off, and the city of Carlisle did not surrender till two days after." Lloyd¹ and Skinner, King's Sergeants, and Ryder, the Attorney General, argued at great length against these objections, showing that the

I., King of Scotland. Subsequently it was frequently besieged in the course of the border wars, one of the most celebrated sieges being the unsuccessful one by William the Lion (1173). The place surrendered to Charles Edward in 1745, and the mayor and corporation proclaimed him king. The cathedral, begun in the reign of William Rufus, was partly destroyed by Cromwell in 1648.—*Dict. of Eng. Hist.*

1. Richard Lloyd, son of Talbot Lloyd of Lichfield, was sent for his early instruction to the grammar school of that city, where no less than four of his contemporary judges were educated—Lord Chief Justice Willes, Chief Baron Parker, Mr. Justice Noel, and Sir John Eardley Wilmot. Called to the bar in 1723, he was elected a bencher of his inn in 1728, and reader in 1744. About that time he was made one of the king's counsel.

In 1746 he opened the indictment against Lord Balmerino in the House of Lords, and is on that occasion designated a knight. He was returned to parliament in 1745 for the borough of St. Michael's, in 1747 for Maldon, and in 1754 for Totnes; but only two of his speeches are recorded,—one on the Westminster election in 1751, and the other on the repeal of the Jew bill in 1753. In 1754 he was advanced to the office of Solicitor General; but on the change of the ministry in November 1756 he was removed, to make way for the Hon. Charles Yorke. On November 14, 1759, his ambition was obliged to be satisfied by being placed on the bench of the Exchequer. His judicial career was very short, as he died on September 6, 1761, at Northallerton, on his return from the Northern Circuit.—*Foss's Lives of the Judges.*

CHAP. words "late of Carlisle" did not mean to give the
XXXII. prisoner's title of dignity, but were only to satisfy a form of law, as denoting the place in which he had been ; and that, by the rules of criminal procedure in England, though very strict upon some points, the offence might be alleged to have been committed on one day and proved by the evidence to have been committed on any other. The objections being still seemingly relied upon, the Solicitor General rose in his turn ; but no sooner had he uttered the introductory words " My Lords," than Lord Balmerino, interposing, observed that " he was satisfied," and asked their Lordships' pardon for taking up so much of their time :

Solicitor General : " My Lords, I was going to have said I did not apprehend it necessary for me to speak from any difficulty in the objections ; but as the answer to them depended not on natural but on legal reasoning, and established forms, I would, for his satisfaction, as he has not the assistance of counsel, have said a word or two, not merely to prove the rules we contend for to be settled by the uniform authority of all our books and many adjudged cases, but to have explained why they have been so settled, that the prisoner may be described in conformity to the statute of additions, as *late of any place* where he has recently been, although he is not domiciled there ; and that the treason must be laid in the indictment to have been committed on a particular day, although proof of its having been committed on another day is sufficient. As he has declared himself satisfied, there is no occasion to say more."

Mr. Solicitor's intentions were praiseworthy ; but it was rather lucky for him that he was released from the task he had undertaken, as these rules of law, however well established, certainly are very absurd and inexplicable ; and he himself used to laugh at the ridiculous length to which lawyers were in the habit of carrying Coke's favorite maxim, " Lex plus laudatur, quando ratione probatur." ¹

1. " Law is more worthy of praise when it is approved by the reason."

The fate¹ of these noblemen excited deep commiseration, notwithstanding the admission which all who

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1. Trial of the rebel Lords Balmerino and Kilmarnock.—Letter of Horace Walpole to Sir Horace Mann, Aug. 1, 1746 :

"I am this moment come from the conclusion of the greatest and most melancholy scene I ever yet saw! You will easily guess it was the Trials of the rebel Lords. As it was the most interesting sight, it was the most solemn and fine : a coronation is a puppet-show, and all the splendor of it idle ; but this sight at once feasted one's eyes and engaged all one's passions. It began last Monday ; three parts of Westminster Hall were inclosed with galleries, and hung with scarlet, and the whole ceremony was conducted with the most awful solemnity and decency, except in the one point of leaving the prisoners at the bar amidst the idle curiosity of some crowd, and even with the witnesses who had sworn against them, while the Lords adjourned to their own House to consult. No part of the royal family was there, which was a proper regard to the unhappy men who were become their victims. One hundred and thirty-nine Lords were present, and made a noble sight on their benches *frequent and full*! The Chancellor (Hardwicke) was Lord High Steward; but though a most comely personage with a fine voice, his behavior was mean, curiously searching for occasion to bow to the minister (Mr. Pelham) that is no peer, and consequently applying to the other ministers, in a manner, for their orders; and not even ready at the ceremonial. To the prisoners he was peevish; and instead of keeping up to the humane dignity of the law of England, whose character it is to point out favor to the criminal, he crossed them, and almost scolded at any offer they made towards defence. I had armed myself with all the resolution I could, with the thought of their crimes and of the danger past, and was assisted by the sight of the Marquis of Lothian in weepers for his son who fell at Culloden—but the first appearance of the prisoners shocked me! their behavior melted me! Lord Kilmarnock and Lord Cromartie are both past forty, but look younger. Lord Kilmarnock is tall and slender, with an extreme fine person: his behavior a most just mixture between dignity and submission; if in anything to be reprehended, a little affected, and his hair too exactly dressed for a man in his situation; but when I say this, it is not to find fault with him, but to show how little fault there was to be found. Lord Cromartie is an indifferent figure, appeared much dejected and rather sullen: he dropped a few tears the first day, and swooned as soon as he got back to his cell. For Lord Balmerino, he is the most natural brave old fellow I ever saw: the highest intrepidity, even to indifference. At the bar he behaved like a soldier and a man; at the intervals of form, with carelessness and humor. He pressed extremely to have his wife, his pretty Peggy, with him in the Tower. Lady Cromartie only sees her husband through the grate, not choosing to be shut up with him, as she thinks she can serve him better by her intercession without: she is big with child and very handsome: so are their daughters. When they were

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reasoned coolly were obliged to make, that, for the stability of government and the peace of society, unsuccessful to be brought from the Tower in separate coaches, there was some dispute in which the axe must go—old Balmerino cried: "Come, come, put it with me." At the bar he plays with his fingers upon the axe, while he talks with the gentleman gaoler; and one day somebody coming up to listen, he took the blade and held it like a fan between their faces. During the trial, a little boy was near him, but not tall enough to see; he made room for the child and placed him near himself. When the trial began, the two Earls pleaded guilty; Balmerino not guilty, saying he could prove his not being at the taking of the castle of Carlisle, as was laid in the indictment. Then the King's counsel opened, and Sergeant Skinner pronounced the most absurd speech imaginable, and mentioned the Duke of Perth, "who," said he, "I see by the papers is dead." Then some witnesses were examined, whom afterwards the old hero shook cordially by the hand. The Lords withdrew to their House, and returning, demanded of the judges whether one point not being proved, though all the rest were, the indictment was false; to which they unanimously answered in the negative. Then the Lord High Steward asked the Peers severally whether Lord Balmerino was guilty! All said "guilty upon honor," and then adjourned, the prisoner having begged pardon for giving them so much trouble. While the Lords were withdrawn, the Solicitor General Murray (brother of the Pretender's minister) officiously and insolently went up to Lord Balmerino, and asked him how he could give the Lords so much trouble, when his solicitor had informed him that his plea could be of no use to him. Balmerino asked the bystanders who this person was; and being told, he said: "Oh, Mr. Murray! I am extremely glad to see you; I have been with several of your relations; the good lady, your mother, was of great use to us at Perth." Are not you charmed with this speech? how just it was! As he went away, he said: "They call me Jacobite; I am no more a Jacobite than any that tried me; but if the Great Mogul had set up his standard I should have followed it, for I could not starve." The worst of his case is, that after the battle of Dumblain, having a company in the Duke of Argyll's regiment, he deserted with it to the rebels, and has since been pardoned. Lord Kilmarnock is a Presbyterian with four earldoms in him, but so poor since Lord Wilmington's stopping a pension that my father had given him, that he often wanted a dinner. Lord Cromartie was receiver of the rents of the King's second son in Scotland, which, it was understood, he should not account for; and by that means had six hundred a year from the Government. Lord Elibank, a very prating, impertinent Jacobite, was bound for him in nine thousand pounds, for which the Duke is determined to sue him."

After this description of the central figures in this trial, the letter continues with a most interesting account of the proceedings, much of which appears in the text and some of which Lord Campbell contradicts.

cessful rebellion must be treated as a capital crime; and when Balmerino, on the scaffold, as a response to the prayer "God bless King George!" exclaimed "God bless King James!" he was regarded with reverence as a martyr. CHAP.
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In the next prosecution in which Murray was engaged, whatever private compunction he might have felt, he had not to encounter any merciful prejudices, and he was only an instrument in directing public vengeance against a man who, after a long career of treachery and rapine, wished to save the miserable remnant of his days by the sacrifice of his own son: Trial of
Lord
Lovat.

"But Lovat's fate exultingly we view;
True to no king, to no religion true:
No Tory pities, thinking what he was;
No Whig compassions, for he left the cause:
The brave regret not, for he was not brave;
The honest mourn not, knowing him a knave."

In this case Murray appeared not as a law officer of the Crown, but as a member of the House of Commons. The wily old chieftain, although, when he thought Prince Charles was about to succeed, he ordered his son and his clan to join his standard, had himself continued shut up in his castle in Inverness-shire. Therefore he could not be proceeded against by the presentment of an English grand jury; and, as the law then stood, he could only be brought to trial by impeachment. The Solicitor General was appointed one of the managers to conduct the prosecution at the bar of the House of Lords in the name of all the Commons of Great Britain, and it was allowed on all hands that he performed this delicate duty with ability and good taste. March,
1747.

On the sixth day of the trial, being called upon to reply, he began by alluding to the disadvantage under which the octogenarian Peer seemed to labor from

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being obliged to rely upon his own advocacy, but said,—

“Under the peculiar circumstances of this case, the assignment of counsel to the prisoner would rather have aided the prosecution. I speak it feelingly; I would rather have been opposed to the ablest advocate than do what is now required of me as a faithful representative of the people. I am persuaded, my Lords, that compassion, inseparable from noble minds, has been ingenious to suggest to you doubts and objections in favor of one standing in that place, who certainly labors under some infirmities, and is allowed to defend himself by no other tongue than his own. If scruples have arisen in the minds of your Lordships, they will gain strength from that consideration, and the honest prejudice in his favor may be of more service than the most brilliant eloquence. But what can avail against acts of treason so irrefragably proved? against the confessions and the boasts of the prisoner himself when he thought that the cause in which he had engaged was to be triumphant?”

Mr. Solicitor then in a most lucid manner analyzed the charges against the prisoner, and the proofs by which they were substantiated,—abstaining from all violence of declamation, but giving full effect to the salient points of the case, and, in a seemingly simple narration of facts, making the prisoner's duplicity and violence rouse a strong spirit of indignation in the breast of the hearers. He thus delicately touched upon the insinuation that the march of the Frasers with the Pretender was to be ascribed solely to the “Master of Lovat:”

“He laments the absence of his witnesses; but there is no calling witnesses without facts; there is no making a defence without innocence; there is no answering evidence which is true. I will do him the justice to believe that, if he *could* with *truth*, he *would not* now throw the whole blame upon the ‘stiff-necked, headstrong disobedience of his son.’ That unhappy boy is already attainted, and is now actually in custody. Though he might have been made the scape-goat if he were

out of reach, yet, in his present situation, I am sure the noble lord would not seek to save his own life by representing his son as the real criminal."

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At the conclusion of this speech, Lord Talbot, the son of Lord Chancellor Talbot, said, "My Lords, the abilities of the learned manager, who just now spoke, never appeared with greater splendor than at this very hour, when his candor and humanity have been so conspicuous that I hope one day to see him add lustre to the first civil employment in this kingdom."

The House then adjourned for a few minutes, that the Peers might take some refreshment. Lord Lovat seized this opportunity of introducing himself to the Solicitor General, who stood near him at the bar; and, having complimented him on his able speech, added: "But I do not know what the good lady your mother will say to it, for she was very kind to my clan as we marched through Perth to join the Pretender."¹

The House being resumed, the prisoner made a very irregular proposal, that the trial should then be postponed to enable him to bring witnesses from Scotland,—but this was strenuously opposed by the Solici-

1. Horace Walpole most grossly misrepresents this anecdote, by transferring it to the trial of Lord Balmerino, and by supposing that the Solicitor General, who had excited suspicion of his loyalty by his courtesy to all the rebels, had brutally insulted them. "While the Lords were withdrawn, the Solicitor General Murray (brother of the Pretender's minister) officiously and insolently went up to Lord Balmerino and asked him 'how he could give the Lords so much trouble?' Balmerino asked the by-standers who this person was; and being told, he said, 'Oh, Mr. Murray, I am extremely glad to see you; I have been with several of your relations; the good lady, your mother, was of great use to us at Perth.'"—*Letter to Sir H. Mann.*

Lovat's tone of jocularly was preserved during the whole course of the trial. Old Sir Edward Fawkener, who had recently married a girl from a boarding-school, having proved in answer to some questions from the Solicitor General, that the prisoner had confessed the part he had taken in the rebellion, he exclaimed, "I have nothing to ask by way of cross-examination;—only my service to Sir Edward, and I WISH HIM JOY OF HIS YOUNG BRIDE."

CHAP. XXXII. tor General and rejected. All the Peers present joined in a unanimous verdict of GUILTY.

When the prisoner was asked if he could show any cause why sentence of death should not be passed upon him, he said :

Lord
Lovat's
compliment
to
Mr. Murray.

"My Lords,—I am very sorry I gave your Lordships so much trouble in my trial, and I give you a million of thanks for your being so good in your patience and attendance while it lasted. I thought myself much loaded by one Mr. Murray,¹ who, your Lordships know, was the bitterest witness there was against me. I have since suffered by another Mr. Murray, who, I must say with pleasure, is an honor to his country, and whose eloquence and learning are much beyond what is to be expressed by an ignorant man like me. I heard him with pleasure, though it was against me. I have the honor to be his relation, though perhaps he neither knows it nor values it. I wish that his being born in the north may not hinder him from the preferment that his merit entitles him to. Till that gentleman spoke, your Lordships were inclined to grant my earnest request, and allow me further time to bring up witnesses to prove my innocence ; but, it seems, that has been overruled. All now that I have to say is a little in vindication of my own character."

Having spoken at great length to justify himself from the charges of dishonorable conduct brought against him, he concluded with the following unexpected and good-humored observation : "I beg your Lordships' pardon for this long and rude discourse. I had great need of my cousin Murray's eloquence for half an hour, and then it would have been more agreeable."

The old Peer, though really very worthless, acted his part so well at the final close of his career, as almost to make us forget his crimes, and to persuade us that he was a true patriot. In the night before his

1. Murray of Broughton, who had been Secretary to the Pretender, and turned king's evidence.

execution, after expressing deep abhorrence of Murray of Broughton, the Pretender's secretary, who had turned king's evidence, he again spoke kindly of his cousin William Murray,—saying, "Mr. Solicitor is a great man, and he will meet with high promotion *if he is not too far north.*" Next morning he laid his head upon the block, exclaiming, "Dulce et decorum est pro patria mori."¹

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After these state trials were over, a period of internal tranquillity followed; and Murray, while he remained at the bar, had no opportunity of increasing his forensic reputation. He was easily the first counsel in the Court of Chancery; but in those days Equity proceedings attracted no degree of public notice. There were levelled against him various scurrilous articles in the newspapers, written by disappointed and envious rivals, representing him as an intruder in England, and containing many illiberal reflections on his native country. In his defence a pamphlet was published, entitled "THE THISTLE," with the motto "NEMO ME IMPUNE LACESSIT."² This was imputed to himself, but must have been written by some very indiscreet friend, as may be seen from the following quotation on the state of the English bar:

Libels
upon him
indis-
creetly
answered.

"Had it not been for the few Scotch there, particularly *two gentlemen* of that nation [Mr. Murray and Mr. Hume Campbell], who support oratory as far as the stated jargon and limited pedantry of the bar will permit, standers-by would be puzzled to know what was intended by the pleadings there. But these gentlemen, no less conspicuous for knowledge and virtue than for politeness of manners and a noble extraction, have gone great lengths the few years they have honored the bar with their attendance, not only to have reformed its language, but to instruct their fellow-barristers in the methods,

1. 18 St. Tr. 530-863. "It is sweet and glorious to die for one's country."

2. "No one wounds me with impunity"—The motto of Scotland.

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forms, and connections of an argument, of which the English generally are most shamefully destitute. Even the furred *noddies* on the bench have benefited by listening to the orderly and nervous discourses of these young Scottish pleaders. Yet are they become the envy of both Bench and Bar; of the latter, because they outshine all that fill it; and of the former, because they are independent, and do daily instruct those who sit upon it. Hence, and because you dread a reformation in the modern scandalous practice of the profession should an upright discerning Scotch lawyer come to preside on the bench, is one of those distinguished Scotch barristers become the object of your obloquy and virulence, although he is no less an ornament to the English senate and bar than to his family and country."

But his progress could not be diverted either by malevolent vituperation or by absurd eulogy. For some years afterwards he was chiefly distinguished as a parliamentary leader. From the rigorous enforcement of the standing order against the publication of debates, we have hardly any fragments of his eloquence,—but memoir writers inform us of the occasions when he came forward with most effect. He ably carried through the House of Commons the bill for abolishing hereditary jurisdictions in Scotland, and the other measures devised by Lord Hardwicke for the tranquillity and civilization of the Highlands. Beyond the common routine of official duty, he opposed, with spirit, although without effect, a bill introduced into the House of Commons to forbid the insurance of enemies' ships in time of war. The ultra-free-trade principles which he then advocated would appear very startling even at the present day, and, indeed, would furnish a defence of the Dutch doctrine, that a besieged city should sell gunpowder and balls to the besieging army. Considering that, if enemies' ships are insured by British underwriters, there is a strong temptation to communicate intelligence to the owners

Murray an
ultra-free-
trader.

of the sailing of British cruisers; and that, upon a capture, there is an indemnity to the enemy from British capital,—independent of any technical objection from the illegality of a contract with an alien enemy,—there seems rational ground for prohibiting such policies of insurance. But Mr. Solicitor General Murray delivered a very long and ingenious speech in defence of them. The first part of it, in which he inveighed against the narrow-minded views which had guided English commercial legislation, is admirable. He is particularly severe upon the monstrous injustice and impolicy of the acts by which the Irish were prevented from importing their corn and cattle into England,—and, when they were establishing manufactures of their own, were prevented from exporting their manufactured goods to any foreign country where they might rival those of England. Having shown the high profits derived by us from the business of insurance, he thus proceeded:

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“It is well known that there is not a more enterprising, adventurous people in Europe than the French naturally are, nor a people who have a greater itch for everything that looks like gaming. Their having no public insurance office nor any number of private insurers in France does not proceed from want of rich men who would be ready and willing to undertake this business, but from the difficulty they find at present to get any custom in this line. The French merchants have been so long used to our shop, and have always found themselves so honorably dealt with here, that they will not voluntarily go elsewhere. Let things remain as they are, and it will never be in the power even of the government of France to set up a public insurance office, nor can any private man there become an underwriter with any hope of success. But this bill being passed, insurance offices will be established in Paris, Nantes, and Bordeaux, in which French ships will be insured not only in time of war but in time of peace; and not French ships only, but the ships of all other foreign nations. Thus, sir, we are to strip ourselves of a most valuable branch of trade, and

CHAP. XXXII. to transfer it to the French that they may become more wealthy in peace and more formidable in war."¹

November,
1748.

His speech
in defence
of the
treaty of
Aix-la-
Chapelle.

When the inglorious contest in which we had been for some years engaged was at last brought to a close, the task of defending the treaty of Aix-la-Chapelle² in the House of Commons devolved upon the Solicitor General. It was first canvassed in the debate on the King's speech announcing that it had been concluded, before a copy of it had been laid upon the table of the House. In answer to the attack led on by Mr. Nugent, who moved a vote of censure, Murray said: "I know nothing of the late treaty which the honorable member has so violently attacked, except from the public newspapers; but if the articles be such as they represent, the peace is more advantageous for us than under the circumstances could have been expected, and the marvel is that the French were induced to agree to it." He then goes over the articles *seriatim* such as they were "*rumored* to be,"—showing that, in reality, he must have had a considerable hand in *negotiating* them. The topic he chiefly dwelt upon was the danger to which the Dutch would have been exposed if hostilities had been continued; and, this having been ridiculed by his opponent, he indignantly observed:

"Danger, sir, has always a very different effect upon the imagination of those who are near and those who are at a distance from it. The former view it through the right, the latter through the wrong end of a telescope. Gentlemen of England, who sit here at their ease, may think that the Dutch might have trusted to their dikes and defied the whole military power of France; but, when we talk of the necessity of making peace, we must consider in what light the Dutch themselves viewed the perils by which they were environed. Suppose

1. Holliday, '90-97; 14 Parl. Hist. 108-133.

2. The treaty of Aix-la-Chapelle, April 18, 1748, closed the war of the Austrian Succession. All the cessions were made at the expense of Austria, and one result of the treaty was the breach of the alliance between that power and England.

(for, as I have no knowledge of the fact, I can only suppose) them to have been so much alarmed that they would have agreed to a neutrality if we had refused the offered terms of conciliation. Their troops being withdrawn, our army would have been much inferior to that of France, and our national honor might have been put to hazard. The French court must have been sensible of that which seems to have escaped the acuteness of honorable members opposite, and therefore, I again say, we may well wonder that the terms of peace are so favorable."¹

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For some sessions after this, Murray led a quiet life in the House of Commons, for Pitt was in office; and, although there never existed any cordiality between them, while they remained colleagues there was a suspension of open hostilities. In the debate on the Bavarian subsidy they both spoke at great length,—to the astonishment of the House, on the same side; and as the *defensive* was not the field in which the great patriot was qualified to shine, although he was so tremendously formidable as an assailant,—the silver-tongued lawyer will be found on this occasion much more dexterous and efficient in explaining the questions which then agitated the German Empire, and proving that it was for the advantage of England to induce Bavaria to take part with Austria against France.²

Interval of
quiet to
Murray in
the House
of Com-
mons while
Pitt was in
office.

An unexpected event soon after occurred, which disturbed party connections and changed the history of the country—the death of the Prince of Wales.³ He

Death of
Frederick,
Prince of
Wales,
20th
March,
1751.

1. 14 Parl. Hist. 331.

2. *Ibid.*, 930-970.

3. The following elegy upon Frederick, Prince of Wales, probably the effusion of some Jacobite Royalist, is offered as an illustration of the spirit of the times and of the estimation in which this prince was held by at least one faction in the kingdom:

Here lies Fred,
Who was alive and is dead:
Had it been his father
I had much rather;

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was not much distinguished for prudence or steadiness; but all who had been disappointed in their hopes of advancement were inclined to speak favorably of his openness of manner and warmth of heart, and the reign of Frederic I., while dreaded by some, had been looked forward to by many with impatience.

The Re-
gency Bill.

The reigning sovereign being turned of seventy, and the youth¹ who was now heir apparent being of tender years, it became necessary, in case of a demise of the Crown, to provide for the exercise of the royal authority by a regent. George II. wished to appoint his favorite son, the Duke of Cumberland,—styled alternately the “Hero of Culloden” and the “Butcher”; and the people demanded the Princess Dowager of Wales,² insinuating that an infant sovereign would be safer under the guardianship of his mother than of his uncle.³ By way of compromise, a bill was brought in to constitute the Princess Regent—with a council, of

Had it been his brother,
Still better than another;
Had it been his sister,
No one would have missed her;
Had it been the whole generation,
Still better for the nation;
But since 'tis only Fred,
Who was alive and is dead,
There's no more to be said.

—*Walpole's Memoirs of George II.*

1. George III.

2. Augusta, princess of Saxe-Coburg, married Frederick, Prince of Wales (son of George II.) in 1736; who died in 1751, leaving his son, afterwards George III., under the guardianship of his mother. The princess, a strong-minded woman, had much influence in the formation of her son's character. His opponents in after life were wont to trace his tendency towards arbitrary rule to his mother's early training. Strongly opposed as she was to the constitutional system of government, which had become firmly established during the reigns of his grandfather and great-grandfather, her most frequent exhortation to her son was, “George, be a king.”

3. “I fear no uncles dead,” was a common quotation, although the Duke of Cumberland was a very honorable and, upon the whole, a very respectable character.

which the Duke of Cumberland was to be President. Murray had the drawing of this bill, and the conduct of it through the House of Commons. His speech in support of it forcibly pointed out the defect in our constitution by which the next heir coming to the throne, although a baby incapable of uttering an articulate sound, is supposed to be of full age, and instruments passing under the great seal in his name have the same validity as if he had actually approved and sanctioned them, being of mature years,—so that the person who can get the baby monarch into his custody may first usurp supreme power as Protector, and then attempt to make himself the head of a new dynasty—as was done by the Duke of Gloucester, afterwards Richard III.¹; pointed out the impossibility of a general law to

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1. Richard III., King (*b.* October 21, 1450, *s.* July 6, 1483, *d.* August 22, 1485), was the son of Richard, Duke of York, who was killed at Wakefield, and brother to Edward IV., and George, Duke of Clarence. Born at Fotheringhay in 1450, he was early inducted into state affairs. In 1461 he was recalled from Flanders, where he had been sent for safety, and created Duke of Gloucester and Lord High Admiral. He held faithfully to his brother during his reign, and showed himself a wise counsellor to him, a good soldier, and a vigorous administrator in the capacity of Warden of the Scottish Marches and other posts. In 1470, on the outbreak of Warwick's insurrection, Richard left the kingdom with Edward, and returned with him to take part in the battle of Barnet (April, 1471). Immediately afterwards he engaged in the campaign of the West, and contributed to the victory of Tewkesbury. In 1472 he married Anne Neville, the widow of Prince Edward, and in consequence became involved in a violent quarrel with his brother Clarence about the inheritance of the Earl of Warwick. The rivalry between the two brothers was keen, but it is not certain how far Richard was responsible for Clarence's downfall, or for his murder, if he was murdered. During the remainder of Edward's reign Gloucester was much occupied with Scottish affairs, and the management of the Border. In April, 1483, he left the North, and on the 30th of the month got possession of the young king, Edward V., as he was being taken to London. In May Richard was appointed Protector, and immediately entered upon the functions of government. A violent quarrel broke out between Richard and the queen's party in the council, which was headed by Lord Hastings. In June Richard, at a sitting of the council, charged the queen and her friends with a plot against his life. Hastings was seized and beheaded without trial on the spot. Lords Grey and Rivers, the

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provide for carrying on the executive government during the minority or disability of the Sovereign; and dwelt upon the wisdom of going no further for the present than enacting the course to be pursued if his queen's relations, were beheaded, and the young prince Richard of York was surrendered to the custody of the Protector. On June 22 Dr. Shaw, in a sermon at Paul's Cross, asserted the claim of Richard to the crown, on the ground that Edward V. and his brother were illegitimate; and on June 24 Buckingham, joined by a crowd of the citizens of London, urged Richard to accept the crown. This Richard did on June 26, and on July 6 he was crowned. Richard now adopted a policy of conciliation, but there was considerable disaffection against him, especially in southern England. The young princes disappeared soon after, and though nothing certain has ever been discovered about their fate, it was believed, and it is extremely probable, that Richard had them put to death. The story increased the feeling against Richard, and meanwhile a *rapprochement* took place between the queen's party and the Lancastrians, headed by Henry of Richmond. Richard's chief supporter, Buckingham, joined the conspiracy. In October Buckingham headed a rising in the west of England which came to nothing. The duke was captured and put to death without trial. But the conspiracy was not crushed, and active preparations were made by the Lancastrians during the next year. Meanwhile Richard was becoming thoroughly unpopular in England. His finances were in disorder, and he was obliged to have recourse to the raising of money by benevolences, though he had himself passed a bill through Parliament the previous year to put an end to that system. In Aug., 1485, Richmond landed at Milford Haven. The Welsh were in his favor, for they looked upon him as a national leader; the old nobility were alienated from Richard, and the new nobles disliked him; his own chief followers, the Stanleys, were in correspondence with the enemy; and the people were indifferent or favorable to the invaders. Richard met them at Bosworth (Aug. 22, 1485). In the crisis of the battle Lord Stanley, with his troops, suddenly joined Richmond. The king was killed fighting desperately. Richard has been represented as a monster of iniquity by Sir Thomas More and other historians who wrote under the Tudors. Unscrupulous, cruel, and violent as Richard was, he was, however, probably no worse than contemporary princes and statesmen; no worse, certainly, than his brother or his successor. His capacity was undoubted, and he seems to have made an effort at the beginning of his reign to govern well. He attempted to restore order, to check the tyranny of the nobles, and to develop commerce. He, however, lacked the astuteness that enabled Henry VII. to accomplish in a great measure the work he had attempted. His private character was not without amiable traits, and had he lived in times of less difficulty, and held the throne by a more secure title, he might have obtained a more favorable verdict from posterity.—*Dict. of Eng. Hist.*

Majesty should be called away before his grandson, Prince George, had reached the age of eighteen. He proved, easily enough, that the Princess Dowager was the fittest person to be named for Regent; but he ineffectually tried to enforce the point that she ought to be controlled by a Council—the constitutional notion being that, with a few exceptions to protect the established religion and the succession to the throne, a Regent ought to exercise all the royal prerogatives under ministerial responsibility. In this courtier-like fashion did he try to struggle with the difficulty :

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“ I have so firm, so well-grounded an opinion of the many good qualities of the Princess, that I am convinced our investing her with sovereign power would be attended with happiness, and perhaps glory, to the nation ; but for this very reason I am against it : the precedent would have such weight, that a future parliament could not depart from it, however strong the reasons might be for following a different course ; and, as this might be of dangerous consequence to her posterity, I am prevented from evincing the regard which is due to her extraordinary endowments.”¹

The bill passed ; but George II. survived till his grandson was able to say from the throne that “ *he gloried in the name of Briton.*”

Murray had managed this matter with such dexterity that he seemed hardly liable to the political vicissitudes by which hopes of official stability or promotion are sometimes dashed, and he himself thought he was equally secure under King or Regent,—when, in a clear sky, a storm arose which very nearly overwhelmed him : He was charged with being an adherent of the Pretender.

Charge
against
Murray
that he
drank the
health of
the Pretender.

The scrape in which he so unexpectedly found himself involved occasioned infinite annoyance and

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vexation to him, and he did not get out of it with entire credit.

When at Westminster School, his most intimate associates were four boys in the same form with himself: Fawcet, Johnson, Stone, and Vernon. The father of the last, although a draper in Cheapside, was of ancient blood, and had embraced trade when a younger brother. The family estate descended upon him, but it was considerably reduced, and he continued to vend his wares as before. Like most of the landed aristocracy, he was a furious Jacobite,—making no secret of his political propensities. Young Vernon was in the habit of taking Murray, Fawcet, Johnson, and Stone to his father's house on holidays; and there they most unquestionably must have heard much Jacobitism talked, whatever else may have happened. Old Vernon was very kind to them, and took particularly to Murray—being charmed with his good looks, his vivacity, and his agreeable conversation, as well as prejudiced in his favor by his noble birth and his *true blue* connections. The five young friends, although carried away in different directions by the accidents of life, still kept up a correspondence by letter, and occasionally met together at supper at the Jacobite draper's in Cheapside after Mr. Murray had been called to the bar. Young Vernon embraced the same profession, but, from ill health, had been unable to prosecute it. Fawcet had settled as a provincial barrister at Newcastle, and had become Recorder of that town. Johnson had taken orders, and was an assistant master of Westminster School. Stone, who was a remarkably fine classical scholar, was dedicating himself to literature, and hoped by his pen to rise to be a Prebendary, or a Commissioner of Customs. In the course of a year or two, young Vernon died,—but Murray continued a friendly intercourse with the father, who, being childless, threw out hints that he

meant to adopt him as a son, and actually left him by will his family estate in the counties of Chester and Derby, which still belongs to the Mansfield-Murrays.

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After the death of Frederick Prince of Wales, Fawcet remaining Recorder of Newcastle, Johnson, by Murray's interest, from being a Prebendary of Durham was promoted to the see of Gloucester. Stone, having been some time private secretary to the Duke of Newcastle, had been appointed sub-governor or preceptor to Prince George.

It happened that at the dinner-table of the Dean of Durham the conversation turned upon Johnson's late elevation, and the interesting question arose, *who was to have his prebend?* The Dean said, "The last news from London is, that Dr. Johnson is to keep it." Fawcet, who was one of the party, observed, "I am glad Johnson gets on so well, for I remember him a Jacobite several years ago, when he used to be with a relation of his, who was very disaffected,—one Vernon, a mercer,—where they frequently drank the Pretender's health." The imprudent Recorder, elevated by wine and gnawed by envy, gave further particulars of those *love feasts*, and introduced the names of Murray, the Solicitor General, who had gained such *éclat* by prosecuting the rebel Lords, and of Stone, now intrusted to conduct the studies and to form the principles of the Heir-Apparent to the throne.

Among the guests present was the foolish old Lord Ravensworth. He most officiously, and in breach of the implied confidence which forms the charm of social intercourse, posted off to London, and communicated this conversation to Mr. Pelham. The Prime Minister listened to the tale with much distaste, but felt it his duty to repeat it to the King. With admirable good sense his Majesty exclaimed, "It is of very little importance to me what the parties accused may have said,

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or done, or thought, while they were little more than boys: I am quite satisfied with the assurance that they have since become, and now are, my very faithful subjects and trusty servants."

But the matter was seriously taken up by the opponents of the Government; and a petition to the King, numerously signed, praying for investigation, contained the following passage: "That to have a Scotchman of a most disaffected family, and allied in the nearest manner to the Pretender's first minister,¹ consulted on the education of the Prince of Wales, and intrusted with the most important secrets of Government, must tend to alarm and disgust the friends of the present royal family, and to encourage the hopes and attempts of the Jacobites."

It was resolved that *the accusation deserved no further notice*; and Murray, who had been made very uneasy by the rumor about him which had got afloat, believed that the matter was at an end. But Stone preposterously insisted on a solemn inquiry; and the charge against him, Murray, and Johnson was referred by the King to the Privy Council.²

1. The following is Horace Walpole's account of this gentleman, in his sketch of the court of the Pretender: "His next prime minister was Murray, nominal Earl of Dunbar, brother of the Viscount Stormont and of the celebrated Solicitor General. He was a man of artful abilities, graceful in his person and manner, and very attentive to please. He had distinguished himself before he was of age, in the last parliament of Queen Anne, and chose to attach himself to the unsuccessful party abroad, for whose reestablishment he had coöperated. He, when still very young, was appointed governor to the young princes; but, growing suspected by the warm Jacobites of some correspondence with Sir Robert Walpole, and not entering into the favorite project of Prince Charles's expedition to Scotland, he thought fit to leave that court and retire to Avignon, where, while he was regarded as lukewarm to the cause, from his connection with the Solicitor General here, the latter was not at all less suspected of devotion to a court where his brother had so long been first minister."

2. The Privy Council is the principal council of the crown, consisting of such persons as are nominated by the crown to the office.

Murray, strongly protesting his innocence, at first said that he would resign his office sooner than submit to such a degrading examination, but was afterwards persuaded by his friends to appear and make his defence along with Johnson and Stone.

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Feb. 15,
1753.

When the hearing came on, there was no case made against the first supposed delinquent; for Fawcet, the only witness, said that at such a distance of time he could not swear that Johnson had drunk the treasonable healths, or had been present at the drinking of them.¹ But he positively averred that "both Stone

Hearing of
the charge
before the
Privy
Council.

Nominally the council is supposed to advise the crown on affairs of state, but practically that duty is fulfilled by a select body called the cabinet, who are members of either House of Parliament and hold the principal offices of state. Those members of the Privy Council (other than the cabinet) who perform active duties are subdivided into committees, of which the principal are the Board of Trade, the Education Committee, and the Judicial Committee. In the case of a large number of Privy Councillors the office is purely nominal: it confers the title of "Right Honorable."

1. He afterwards wrote the following suspicious letter, to clear the Bishop, who, hearing that he was repeating the calumny, insisted on a written recantation from him:

"London, 29th January, 1753.

"My Lord,—I take the liberty of giving you the trouble of this letter, in order to wipe off any reflections which may have been to your Lordship's prejudice from a misconstruction or misrepresentation of any thing said by me at the Dean of Durham's last summer. It is now, I believe, near twenty years since your Lordship and I met at my relation's, and before that time I never had any acquaintance with your Lordship; and it really surprises me very much, that any inference from what I said of my relation's principles in politics should, by any one, be applied to your Lordship. It is a very disagreeable thing to be giving an account of what has passed in any conversation; but it is my duty, in the most solemn manner, to declare that I did not, and could not, say any thing which in the least could, or which was any way meant by me to charge your Lordship with being the proposer of, or ever being present at, the drinking of any disloyal healths. I am very sorry for the trouble you have had about this affair; and am, with the greatest respect,

"My Lord,

"Your Lordship's most obedient humble servant,

"CHR. FAWCET.

"Whatever has been construed as a surprise of mine at your Lordship's preferment, I am sure it was meant by me as an intima-

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and Murray, on various occasions down so late as the year 1732, had, at Mr. Vernon's house, drunk the health of the Pretender, and once he was sure they had done so on their knees: the conversation was wont to be partly literature, partly treason; the customary healths THE CHEVALIER¹ and THE EARL OF DUNBAR." However, on his cross-examination he prevaricated a good deal, and it appeared that he was actuated by an undue wish either to spite or to screen his old associates.

Stone, although he had so loudly demanded the inquiry, was generally supposed to be the most seriously liable to the charge; and there is now much reason to suspect that he tintured the mind of his royal pupil with Jacobitical or high-Tory principles,—telling him that, although it was impossible to recall the Stuarts, they had been unjustly expelled, and that *the divine right of kings* ought to be the rallying cry of the new dynasty which God had placed upon the throne. He soon after fell into obscurity; but great interest was then excited by his case, from a general wish that he should be removed and make way for a more enlightened and liberal instructor. His defence was said to be very ingenious, but no part of it has been preserved. The following a slight sketch of the address of the Solicitor General:

Murray's
speech in
his own
defence.

"Illiberal and unfair reflections have been made on the political principles of my relations; but, my Lords, I was early sent to seek my own way in the world; I learned to form opinions for myself, and I have been well affected to the present establishment ever since I could think on the subject. When I went to the University of Oxford I took the oaths to the Government, and I did so with seriousness and *ex animo*. Pleading in the courts at Westminster and at the bar of either

tion only that your Lordship was fortunate in having the preferences drop at the time they did.

"Lord Bishop of Gloucester."

1. The old Pretender.

House of Parliament, I never uttered a word to disparage the Protestant settlement, or to create any longing for the exiled family. I determined never to come into the House of Commons but upon Whig principles, and I at last accepted a seat under the auspices of a noble Duke, now present, who, for forty years, has been the firmest friend of the Hanoverian line. With regard to office, can it be supposed that a person of *Sir John Strange's*¹ well-known loyalty would have resigned in my

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1. Sir John Strange, a lawyer, born in London, 1696. He became solicitor general in 1736, and in 1739 recorder of London, which office he resigned in 1742, and some years afterwards was made master of the rolls. Died May 18, 1754. His "Reports" were published 1755, and again 1795. His son, *Sir John Strange*, was educated at Clare Hall, Cambridge, and afterwards became the British minister at Venice. He was an able antiquary, and collected a fine library and museum, which were sold at his death, in 1799.—*Low and Pull. Dict. of Eng. Hist.*

The following estimate of his Reports we take from the Reporters of Wallace—fourth edition, page 420.—See Wallace.

Chief Justice Willes, who would be likely to know, speaks of Strange as "a faithful reporter" (2 Wilson, 38), and this idea is confirmed by Chancellor Kent. 1 Commentaries, 488, and see the remark of Spencer, J., 6 Johnson, 399. Lord Hardwicke, referring to an argument of his own, while a young man at the bar, mentions that Strange borrowed his papers to transcribe; so that whatever faults the argument contained were not the reporter's, but his own. (Lord Campbell's "Lives of the Lord Chancellors and Keepers," vol. 5, p. 16.) But Sir Michael Foster, referring to one case in particular, "cannot help saying, that the circumstances omitted in the report are too material, and enter too far into the true merits of the case, to have been dropped by a gentleman of Sir John Strange's abilities and known candor, if he had not been over-studious of brevity." Reports, etc., 294. See also 2 Burrow, 1072, per Lord Mansfield. Sir James Burrow notes the same thing where a case cited from Strange had perplexed the bar and court (3 Burrow, 1428), Mr. Dunning saying that it was "ill reported," Lord Mansfield that it was "unintelligible," while Dennison, J., defended it as "rightly taken." Sir James in a marginal note adds: "If it is rightly taken, I am sure it is not fully taken. At least I know that my own note of it employs twice as many pages as does his lines." A new edition of Strange's Reports was published by Mr. Nolan, in 1795; who says, that it has been his first object to clear up those few passages in which the author, from his conciseness, is liable to the imputation of obscurity, and to mark those still fewer places, in which he seems to have fallen into errors." Yet even of Strange, thus revised, Sir Anthony Hart is made to say, that it is not "a book we can place much confidence in." 1 Simons, 432. Sir Anthony Hart is a respectable authority; but the modern equity lawyers distinguish cases so much by filling

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favor if he had not been thoroughly convinced of my sincerity? Considering my position at the bar, I had little to gain by making any concessions for official rank; and, ever since I have been in the King's service, I have got nothing by my employment (I am sure I do not speak it reproachfully) but the ordinary fees for the business which has occupied my time. No friend of mine have I ever recommended to preferment. I have not been able to learn any objection to my public conduct except that, in prosecuting the rebel Lords, I did not load them with reproachful epithets; as if epithets would have added to their guilt. I never considered that such language would be agreeable to my royal master; and, if I had been counsel for the Crown against Sir Walter Raleigh, and that unfortunate man had been as clearly guilty of high treason as the rebel Lords, I would not have made Sir Edward Coke's speech against him to gain all Sir Edward Coke's estate and all his reputation."

He then commented minutely and forcibly on the evidence of Fawcet; and having thanked the Lords for their indulgence in hearing him, and the goodness and justice by which the King was actuated in desiring that his servants should not be stabbed in the dark, he concluded by a solemn declaration that he had never given any treasonable toasts at Mr. Vernon's or elsewhere, and that he had never consciously been present when any such toasts were drunk.¹

Mr. Murray having concluded, the Lords of the Council came to a unanimous resolution of reporting to his Majesty "that there appeared to them no foundation for any part of the charge, and that the charac-

up, by touches, shading, and miniature finish, that perhaps the Vice-Chancellor would be thought fastidious by a common lawyer, who would look for nothing beyond a good outline sketch, or a well-conceived study.

1. Some accounts say that he voluntarily took an oath before the Lords of the Council to the same effect; but this I do not believe, for he would hardly have ventured on such an appeal to Heaven, under the reservation in his own mind that the toasts were drunk in frolic, and that, in the midst of vapid language, there was no real design of treason.

ters of the parties accused were in no degree affected by it." ¹ CHAP.
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The discussion was revived before parliament by a motion of the Duke of Bedford ² for an address to the King, praying that he would be graciously pleased to direct a copy of all these proceedings to be laid before the House of Lords; but this was negatived without a division, ³ and no further inquiry was made into the circumstances. ⁴ He is acquitted,
but suspected.

March 22,
1753.

Thus Murray preserved his position, notwithstanding an accusation which threatened such serious consequences. Although it did not in any degree hinder his advancement in public life, it somewhat damaged his reputation for sincerity, and it afforded a topic to his opponents of which they ever after unsparingly availed themselves. They perceived that there was a vulnerable point, at which they might aim a staggering blow; and, subsequently, on important occasions, he betrayed an increased timidity, which materially impaired the effect of his consummate talents for debate.

1. Hall. 98-104; Doddington's Diary, 211-235; Walpole's Memoirs of the Reign of George II. i. 266-290.

2. John Russell, fourth Duke of Bedford, an English statesman, born in 1710, succeeded to the dukedom in 1732. He became secretary of state in 1748, and negotiated in 1762 a treaty of peace with France. He was president of the council in the Grenville ministry (1763-65). He was a man of good intentions, but was misled by a set of political jobbers, called the "Bloomsbury gang." Died in 1771.—*Thomas' Biographical Dict.*

3. This debate is not mentioned in the Parliamentary History, but a full account of it is given by Horace Walpole, Mem. Geo. II., vol. i. p. 272-290.

4. An attempt was made to ridicule the Duke of Bedford, and to laugh away the whole affair, by a *jeu d'esprit* which thus began:

"To probe thy crimes, disloyal Fiend,
See council of the state convened.
'My Lords' (an age-wise peer address),
'These crimes convulse my loyal breast:
Ere manhood's down, accusers say,
Had graced his chin, ere taught to pray,
He drank, afraid of no detection,
Disloyal health with genuflection.'"

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Soon after the close of this inquiry Pitt resigned his office, being mainly induced to do so from the difficulty he had for some time experienced in gratifying his propensity to assail his old rival. He made ample amends for his late unwilling forbearance. Thus, in uttering a vehement invective against the University of Oxford for its Jacobitism, he palpably referred to the supposed youthful opinions of Mr. Murray :

Pitt's at-
tack upon
him as a
Jacobite.

"The body he was describing," he said, "was learned and respectable ; so much the more dangerous ! He would mention what had happened to himself the last summer, on a party of pleasure thither. They were at the window of the Angel Inn ; a lady was desired to sing GOD SAVE GREAT GEORGE OUR KING. The chorus was re-echoed by a set of young lads drinking at a college over the way, but with addition of rank treason. He hoped, as they were boys, he should be excused for not having taken more notice of them. Perhaps some of them might hereafter zealously fill the office of Attorney or Solicitor General to a Brunswick Sovereign. After this, walking down the High Street, in a bookseller's shop he observed a print of a young Highlander with a blue ribbon. The bookseller, thinking he wanted it, held it out to him. But what was the motto ? *Hunc saltem everso juvenem !* This was the prayer of that learned body. Yet, if they are disappointed in their plots, the most zealous of them, when leader of the Government party in this House, may assure you that he always approved of the Protestant succession, and that he refused to enter parliament except upon Whig principles."

"Colors, much less words," adds Horace Walpole, who has reported this speech, "could not paint the confusion and agitation that worked in Murray's face during this almost apostrophe. His countenance spoke everything that Fawcet had been terrified to prevaricate away."¹

We shall find that Pitt long afterwards returned to the assault with the same weapon in his hand, and that

1. Walp. Mem. i. 358.

it was unmercifully used by Junius¹ and by Horne CHAP.
Tooke against Lord Chief Justice Mansfield in the suc- XXXII.
ceeding reign.

Murray closed the longest and most brilliant Solicitor Generalship recorded in the annals of Westminster Hall by a service of lasting importance to the rights of Great Britain, upon which depends her greatness as a maritime power. The King of Prussia,² backed by Murray's celebrated vindication of our naval rights.

1. Junius, the assumed name of a political writer who in January 1769 began to issue, in London, a series of famous letters, which first appeared in Woodfall's "Public Avertiser." Junius opposed the ministry then in power, and denounced several eminent persons with great severity of invective and pungency of sarcasm. His style is eminently pure, terse, and vigorous. These letters had a great popularity, and powerfully promoted the cause of civil liberty. Among the numerous persons to whom these letters have been attributed were Sir Philip Francis, Lord Chatham, Edmund Burke, Henry Grattan, Colonel Barré, Gibbon the historian, John Horne Tooke, Horace Walpole, John Wilkes, and Wedderburn (afterwards Lord Loughborough). The publication of the Letters of Junius continued until January 1772. In his dedication to the people of England he said, "I am the sole depository of my own secret, and it shall perish with me." A multitude of books and essays have been written in the attempt to solve the mystery. At the present time (1870), the question appears to be no longer doubtful. A great number of circumstances (some of which have only very lately come to light) seem to point with unerring certainty to Sir Philip Francis as the true Junius. Among the various incidental proofs bearing on this question, one of the most curious and decisive is given in "Lippincott's Magazine" for January 1870, p. 118.—*Thomas' Biog. Dict.*

2. Frederick II., king of Prussia, commonly called *The Great*, was the son of Frederick William I., and born Jan. 24, 1712. In 1733 he was married to the princess of Brunswick Wolfenbuttle. In 1740 he succeeded to the throne, and by taking advantage of the defenceless state of Maria Theresa, queen of Hungary, he added Silesia to his dominions. In 1744 he again took up arms against the empress-queen, and the treaty of Dresden, which was concluded in 1745, left him in possession of an extended territory. In 1755 he entered into an alliance with England, which produced the Seven Years' War, when Frederick exhibited all the powers of his character as a skilful general. In 1757 he had to contend with Russia, Austria, Saxony, Sweden, and France; notwithstanding which, and though his enemies made themselves masters of his capital, he extricated himself from his difficulties, and by the battle of Torgau repaired all his losses. In 1763 peace was restored; after which Frederick led a philosophic life, with the exception of his share in dismembering Poland in 1773. He died Aug. 17, 1786, and was succeeded by his nephew. Frederick

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some neighboring states, had sought to remodel the law of nations in a way that would have rendered naval superiority in time of war of little avail,—by asserting that belligerents are not entitled to seize upon the ocean the goods of enemies in neutral ships; by insisting that contraband of war, the property of neutrals, may be carried by them to enemies' ports; by denying the right of belligerents, under any circumstances, to search the vessels of neutrals; and by attacking the legality and validity of all the proceedings in the Courts of Admiralty of England for a condemnation of neutral ships or goods by reason of an alleged violation of the duties of neutrality. These pretensions were embodied in a memorial presented by M. Michell, the Prussian minister at the Court of St. James's. The masterly answer to it is signed by Sir George Lee, Judge of the Prerogative Court, Dr. Paul the Advocate General, and Sir Dudley Ryder the Attorney General, as well as by Mr. Murray the Solicitor General; but we know, from undoubted authority, that the composition of it was exclusively his.¹ Having myself been employed to write such papers, I may possibly be not unqualified to criticise it, and I must say that I peruse it with "a mixed sensation of admiration and despair." The distinctness, the precision, the soundness, the boldness, the caution, which characterize his propositions, are beyond all praise; and he fortifies them by unanswerable arguments and authorities. Preserving diplomatic—nay, even judicial—calmness and dignity, he does not leave a tatter of the new neutral code undemolished.

the Great was an author as well as a warrior, but his writings are all in French, which language he preferred to German. Though he was a tolerable poet, as he evinced in his didactic piece on the art of war, he excelled in history. His works have been published in 19 vols. 8vo. He had fine parts, and well understood the art of governing a great kingdom; but his principles were Machiavelian, and he was a confirmed infidel.—*Cooper's Biographical Dict.*

1. Holliday, 424.

Thus with imperishable granite he laid the foundation on which the eternal pillar of England's naval glory has been reared.

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This performance particularly excited the admiration of the President Montesquieu,¹ who said it was "*réponse sans réplique*." It is the great repertory to which our advocates and judges have had recourse when any part of these dangerous pretensions have been readvanced. Sir William Scott (Lord Stowell) often quoted it, always spoke of it with reverence, and represented his own decisions, which are received with submission throughout the civilized world, as only an expansion of its principles.

It would be desirable to relieve the tiresomeness of these details by describing the Solicitor General as he appeared in the social circle, but at this period we know hardly anything of him except as a lawyer or a politician. After the death of Pope, although he by no means neglected literature, he does not seem to have admitted any literary character to his intimacy. I am sorry I cannot find that he ever noticed his countryman Thomson, or that he ever desired to be introduced to the author of the Rambler. In truth, he was so over-

His private
life.

1. Charles de Secondat, Baron de la Brède et de Montesquieu, was born in the castle of Brède, in Guienne, 18 Jan. 1689. He became a counsellor of the parliament of Bordeaux in 1714, and two years afterwards succeeded his uncle as president à mortier. His first appearance as an author was in the publication of the "Persian Letters," a work of considerable ingenuity, though mixed with some free opinions in religion. In 1728 Montesquieu was admitted a member of the academy, on which occasion he delivered an eloquent discourse. Having given up his civil employments he went on his travels, and remained in England three years. After his return he retired to his estate, and there completed his work "On the Causes of the Grandeur and Declension of the Romans," 1734. His greatest performance, however, is the "Spirit of Laws," 1748, which though attacked by some writers, secured its ground in the estimation of the literary world. The author died 10 Feb. 1755. His other works are "The Temple of Gnidus," a piece called "Lysimachus," and an "Essay on Taste."—*Cooper's Biographical Dict.*

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whelmed by professional and official business, that, when he could escape from it for a brief interval, he preferred repose, with less intellectual society, to gladiatorial contests with the rising wits of the age. He continued gratefully attached to those who had been kind to him in his juvenile days, and he still used often to visit the first Lord Foley on a Saturday in the country, and remain with him till the Monday morning, when business called him back to town. "On a brother barrister interrogating him how he could spend his time where so little pleasantry or liveliness prevailed,—'It is enough,' said he, 'if I contribute by my visits to the entertainment of my *fast friends*; or, if I fail in that, I am sure to contribute by lassitude to the repose of my own faculties.' " ¹

His enjoyment of lassitude.

His patronage of Blackstone.

If he did not foster any young poet, he deserves the credit of discovering and turning to public usefulness the genius of Blackstone as a jurist. The professorship of civil law in the University of Oxford being vacant, he recommended this extraordinary man, then quite unknown, as decidedly the fittest person to fill it. The Duke of Newcastle promised him the appointment; but, ever eager for a dirty job rather than for the public good, he thought it right to probe a little the political principles of the candidate, and to ascertain how far he could be relied upon as a party tool, and, *more suo*, he thus addressed Mr. Blackstone when presented to him: "Sir, I can rely on your friend Mr. Murray's judgment as to your giving law-lectures in a good style, so as to benefit the students, and I dare say I may safely rely upon you; whenever anything in the political hemisphere is agitated in that University, you will, sir, exert yourself in our behalf." The answer was, "Your Grace may be assured that I will discharge my duty in giving law-lectures to the best of my poor

1. Holliday, 131.

abilities." "Ay, ay," replied his Grace hastily, "and your duty in the other branch too." Blackstone made a hesitating bow, and, a few days after, had the mortification to find, from the Gazette, that Jenner, utterly ignorant of law, civil, canon, and common, but considered the best electioneering agent in the whole University, was appointed to expound the Pandects, which he had never read, and could not construe.

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Murray behaved with spirit and judgment; for he advised Blackstone to settle at Oxford, and to read law-lectures to such students as were disposed to attend him. The plan had splendid success, and, happily, soon after suggested to the mind of Mr. Viner¹ the establishment of a professorship for the Common Law of England in the University of Oxford. To this we owe the immortal Commentaries of Blackstone, which, when they were given to the world, drew forth the following high tribute of approbation from him to whose judicious patronage they were to be traced. A brother peer having asked him, as a friend, what books he would recommend for his son, who was determined to be a lawyer, the Chief Justice replied,—

"My good Lord, till of late I could never with any satisfaction to myself answer such a question; but since the publication of Mr. Blackstone's Commentaries I can never be at a loss. *There* your son will find analytical reasoning, diffused in a pleasing and perspicuous style. *There* he may inhale imperceptibly the first principles on which our excellent laws are founded; and there he may become acquainted with an uncouth crabbed author, Coke upon Littleton, who has dis-

1. Charles Viner, an English lawyer and compiler, born about 1680, published in 1751 "A General and Complete Abridgment of Law and Equity" (24 vols. fol.), a work on which he is said to have employed half a century. He died in 1756, bequeathing twelve thousand pounds to establish a professorship of common law at Oxford, which was first filled by Blackstone.—*Thomas' Biographical Dict.*

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gusted and disheartened many a tyro, but who cannot fail to please in the modern attire in which he is now decked out."

3d March
1754.
Death of
Mr. Pel-
ham.

Murray
declines
the situa-
tion of
Prime
Minister.

Murray had been Solicitor General for the unexampled period of twelve years, and grumbled at his bad luck in so long holding a subordinate office. Not only was the chief responsibility of legal business thrown upon him, but, while the Attorney General was politically a mere cipher, he himself was relied upon as the most efficient defender of the policy of the Government in the House of Commons. An event now happened which many thought would at once place Murray in the situation of Prime Minister—the sudden death of Mr. Pelham. Who was to succeed him? The Duke of Newcastle, notwithstanding his immense borough patronage and his low talent for intrigue, was pronounced by George II. as fit only to be "master of the ceremonies at a small German court"; and the nation, aware of his frivolity and his absurdities, concurred in this opinion. Pitt and Henry Fox¹ were both men of splendid abilities, but they were both disliked by the King, and neither of them then had a sufficient aristocratic connection or popular reputation to be able to storm the Cabinet. Murray, even in Pelham's lifetime, had been virtually the leader of the

1. Henry Fox, the first Lord Holland, was a son of Sir Stephen and the father of the great orator Charles J. Fox. He was secretary at war in the reign of George II., about 1750. In 1755 he became secretary of state, and Whig leader of the House of Commons when the elder Pitt was leader of the opposition. Fox had parliamentary talents of a very high order, but was inferior to Pitt in declamation. Upon the dissolution of Newcastle's ministry, the King sent for Fox, and directed him to arrange a new cabinet in concert with Pitt; but the latter declined the coalition with his rival. In 1762 he accepted office in the ministry of Lord Bute, and became ministerial leader in the House; but in the next year Bute resigned, and Fox was raised to the peerage, as Lord Holland. According to Macaulay, "he was the most unpopular statesman of his time, not because he sinned more, but because he canted less." Died in 1774, leaving his title to his son Stephen.—*Thomas' Biog. Dict.*



HENRY FOX, FIRST LORD HOLLAND.

Lower House, and there would have been little change in the aspect or proceedings of that assembly if he had been put at the head of the Treasury. He was very agreeable to the King, and he was generally respected by the nation. A serious objection to him arose in some quarters from the suspicion of *Jacobitism*;—not that any one believed he would betray his trust and try to bring in the Pretender—but some thinking men were afraid of his acting upon arbitrary principles of government, and many condemned him for the duplicity of which they believed he had been guilty. From personal reasons, Pitt and Fox, who still held office, both opposed his advancement; and even Lord Hardwicke, the Chancellor, viewed him with an eye of jealousy.¹ Had Murray himself really desired the elevation, and made a bold effort to obtain it, all these difficulties would probably have been overcome, and our party history at the conclusion of this and the commencement of the succeeding reign would have taken a very different turn; but, from a prudent dread of the vicissitudes of ministerial life, and from a high feeling that his destiny called him to reform the jurisprudence of his country, he sincerely and ardently desired to be placed on the bench,—and the special object of his ambition was to be Chief Justice of England, with a peerage. Horace Walpole, indeed, sarcastically says “he was always waiving what he was always courting”; but all impartial observers declare that he invariably refused to go out of his profession for any promotion.

The consequence was, that the Duke of Newcastle, the person most incompetent, and, therefore, least exciting jealousy of all who had been thought of on this occasion, became Prime Minister, to the astonishment of the whole nation,—from the King on the throne to

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Duke of
Newcastle
Prime
Minister.

1. Walpole's Memoirs, vol. i. p. 329.

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his Grace's own lackeys, who had often been jeered at by brother lackeys in the lobby of the House of Lords while, addressed by their masters' titles, they discussed their masters' characters.¹

1. Lord Macaulay's well-known estimate of the character of the Duke of Newcastle is worthy of repetition.

"We wonder that Sir Walter Scott never tried his hand on the Duke of Newcastle. An interview between his Grace and Jeanie Deans would have been delightful, and by no means unnatural. There is scarcely any public man in our history of whose manners and conversation so many particulars have been preserved. Single stories may be unfounded or exaggerated. But all the stories about him, whether told by people who were perpetually seeing him in Parliament and attending his levee in Lincoln's Inn Fields, or by Grub Street writers who never had more than a glimpse of his star through the windows of his gilded coach, are of the same character. Horace Walpole and Smollett differed in their tastes and opinions as much as two human beings could differ. They kept quite different society. Walpole played at cards with countesses, and corresponded with ambassadors. Smollett passed his life surrounded by printers' devils and famished scribblers. Yet Walpole's Duke and Smollett's Duke are as like as if they were both from one hand. Smollett's Newcastle runs out of his dressing-room, with his face covered with soapsuds, to embrace the Moorish envoy. Walpole's Newcastle pushes his way into the Duke of Grafton's sick-room to kiss the old nobleman's plasters. No man was so unmercifully satirized. But in truth he was himself a satire ready made. All that the art of the satirist does for other men, nature had done for him. Whatever was absurd about him stood out with grotesque prominence from the rest of the character. He was a living, moving, talking caricature. His gait was a shuffling trot; his utterance a rapid stutter; he was always in a hurry; he was never in time; he abounded in fulsome caresses and in hysterical tears. His oratory resembled that of Justice Shallow. It was nonsense effervescent with animal spirits and impertinence. Of his ignorance many anecdotes remain, some well authenticated, some probably invented at coffee-houses, but all exquisitely characteristic. 'Oh—yes—yes—to be sure—Annapolis must be defended—troops must be sent to Annapolis.—Pray where is Annapolis?' 'Cape Breton an island! wonderful!—show it me in the map. So it is, sure enough. My dear sir, you always bring us good news. I must go and tell the King that Cape Breton is an island.'

"And this man was, during near thirty years, Secretary of State, and, during near ten years, First Lord of the Treasury! His large fortune, his strong hereditary connection, his great parliamentary interest, will not alone explain this extraordinary fact. His success is a signal instance of what may be effected by a man who devotes his whole heart and soul without reserve to one object. He was

Murray at last gained a step in professional rank, being appointed Attorney General, on the elevation of Sir Dudley Ryder to the bench. At the same time, he undertook the arduous duty of being Government leader in the House of Commons, which he would probably have declined had he foreseen that Pitt, dissatisfied with this arrangement, was again to resign his office and to go into hot opposition.

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Murray
Attorney
General.

eaten up by ambition. His love of influence and authority resembled the avarice of the old usurer in the 'Fortunes of Nigel.' It was so intense a passion that it supplied the place of talents, that it inspired even fatuity with cunning. 'Have no money dealings with my father,' says Martha to Lord Glenvarloch; 'for, dotard as he is, he will make an ass of you.' It was as dangerous to have any political connection with Newcastle as to buy and sell with old Trapbois. He was greedy after power with a greediness all his own. He was jealous of all his colleagues, and even of his own brother. Under the disguise of levity he was false beyond all example of political falsehood. All the able men of his time ridiculed him as a dunce, a driveller, a child who never knew his own mind for an hour together; and he overreached them all round.

"If the country had remained at peace, it is not impossible that this man would have continued at the head of affairs without admitting any other person to a share of his authority until the throne was filled by a new Prince, who brought with him new maxims of government, new favorites, and a strong will. But the inauspicious commencement of the Seven Years' War brought on a crisis to which Newcastle was altogether unequal."—*Macaulay: Essay on Walpole's Letters to Horace Mann.*

CHAPTER XXXIII.

CONTINUATION OF THE LIFE OF LORD MANSFIELD TILL
HE WAS MADE LORD CHIEF JUSTICE OF THE KING'S
BENCH.

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A.D. 1754.

SOON after Mr. Murray had been placed in his new position he had the offer of professional advancement. Sir John Strange, the Master of the Rolls,¹ died; and as the holder of this office may sit in the House of Commons, the Duke of Newcastle was willing to confer it upon his champion there. To the Chancellor's letter proposing this arrangement, the following answer was received:

"Clermont, Saturday, one o'clock.

"My dear Lord,—I have the honour of your Lordship's letter, & am most truly concerned for poor S^r John Strange, whom I honoured & loved extreamly for his many excellent publick qualities, & most amiable private ones. I scarce know any man, with whom I had so little acquaintance, that I should more regret.

"I am much obliged to you for your laying your thoughts before me in so kind & full a manner. There is every consideration which can come in question upon this occasion, stated in the plainest & most impartial light. To be sure it should be offered to the Attorney General. Common justice & proper

1. The Master of the Rolls was one of the judges of the Court of Chancery; he was so called because he had the custody of the rolls of all patents and grants which pass the great seal, and also of the records of chancery. He presided in a court called the Rolls Court, and his duties were assistant to those of the Lord Chancellor. He was first called Master of the Rolls in 11 Hen. 7, c. 18; but his office is as ancient as the Court itself. Unlike that of the Vice-Chancellors, his jurisdiction was in the nature of a distinct jurisdiction, which the suitor might, for certain purposes, elect in preference to that of the Lord Chancellor.

regard require it, & therefore I hope y^r Lordship will sound him upon it, *this evening*. I shall take no notice to him of it, directly or *indirectly*. It is fit that your Lordship sho^d have the whole transaction of this affair, & I shall approve whatever you do in it, as he likes best ; I cannot at all guess what he would do. For the King's service, it is, I think, to be wished that he should remain where he is ; but, as his health is not quite good, & this is a very honourable station, consistent with his seat, figure, & use in the House of Commons, I cannot pretend to judge what he will do. If he sho^d accept it, it will be difficult to replace him."

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Murray, without hesitation, declined the office, as he considered it of a subordinate character, and not by any means opening to him the opportunity to which he aspired of making a great name as a Judge.

Murray
Refuses the
Rolls.

The two next years, although varied by strong excitement, must have been fertile of anxiety and annoyance to Murray, and he must sometimes have longed for the obscure repose of the Rolls. He had to defend an Administration which was feeble and unfortunate ; and he was constantly assailed by an opponent of unparalleled power in invective and sarcasm, wholly unscrupulous in choosing topics and expressions most to his purpose, and animated against him by long rivalry and personal dislike.

A.D. 1754-
1756.

Unfortunately, the Parliamentary History at this time is almost a blank ; the few pages which it gives to several sessions being filled up with King's speeches and addresses of the two Houses in return. But memoir-writers furnish us with a lively description of some of the conflicts which took place, and of the general results. "Pitt," says Lord Waldegrave,¹ "under-

1. James, Earl Waldegrave, an English statesman and a favorite of George II. In 1757 he was charged with the formation of a ministry, and, says Walpole, "the public was not more astonished at that designation than himself" ; the idea was, however, abandoned almost immediately. He left some interesting "Memoirs" from 1754 to 1758.—*Bacon's Biog. Dict.*

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took the difficult task of silencing Murray, the Attorney General, the ablest man as well as the ablest debater in the House of Commons."¹ Horace Walpole himself, then a member of the House of Commons, in reference to the outset of the new Administration, observes,—

Passages
of arms
between
Murray
and Pitt.

"Murray, who at the beginning of the session was awed by Pitt, finding himself supported by Fox, surmounted his fears, and convinced the House, and Pitt too, of his superior abilities. He grew most uneasy to the latter. Pitt could only attack; Murray only defend. Fox, the boldest and ablest champion, was still more formed to worry; but the keenness of his sabre was blunted by the difficulty with which he drew it from the scabbard; I mean the hesitation and ungracefulness of his delivery took off from the force of his arguments. Murray, the brightest genius of the three, had too much and too little of the lawyer: he refined too much, and could wrangle too little, for a popular assembly. Pitt's figure was commanding; Murray's engaging, from a decent openness; Fox's dark and troubled; yet the latter was the only agreeable man. Pitt could not unbend; Murray in private was inelegant; Fox was cheerful, social, communicative. In conversation none of them had wit: Murray never had: Fox had in his speeches, from clearness of head and asperity of argument. Pitt's wit was genuine; not tortured into the service, like the quaintnesses of my Lord Chesterfield."^{2 3}

1. Walp. Mem., p. 31.

2. Walp. Mem. i. 490.

3. Philip Dormer Stanhope, fourth Earl of Chesterfield, an English courtier orator, and wit, renowned as a model of politeness and an oracle of taste. He was born in London in September 1694, and was the eldest son of Philip, third Earl of Chesterfield, and Elizabeth Saville, who was daughter of the Marquis of Halifax. Having graduated at Cambridge, he made the tour of Europe in 1714, during which he contracted an inveterate passion for gaming. In 1715, through the influence of his uncle, General Stanhope, he was appointed a gentleman of the bedchamber to the Prince of Wales, and was elected to parliament. He supported the party of the heir-apparent in the quarrel between the latter and his father, George I. He was one of the most brilliant and effective debaters of that period. Walpole says that on one occasion Chesterfield made "the finest oration he ever heard." On the death of his father, in 1726,

Henry Fox, in a letter to a friend, after giving some account of two speeches delivered by Pitt in the following session, adds, "In both speeches, every word was *Murray*; yet so managed, that neither he nor anybody else did or could take public notice of it, or in any degree reprehend him. I sat near Murray, who suffered for an hour."¹

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"On another occasion," according to Mr. Butler, "Pitt made use of an expression of savage triumph which was long in every mouth. Having for some time tortured his victim by general invective, he suddenly stopped, threw his eyes around, then, fixing their whole power on Murray, uttered these words in a low, solemn tone, which caused a breathless silence: 'I must now address a few words to Mr. Attorney: they shall be few, but they shall be daggers.' Murray was agitated; the look was continued; the agitation increased. 'Judge Festus trembles!' exclaimed Pitt; 'he shall hear me some other day.' He sat down. Murray made

he passed into the House of Lords, and in 1728 was ambassador to Holland. A few years later George II. appointed him lord steward of the household. "He was at the head of *ton*," says Macaulay, "in days when in order to be at the head of *ton* it was not sufficient to be dull and supercilious." In 1733 he married Melusina Schulemburg, Countess of Walsingham. Though a Whig in politics, he was dismissed from office by Walpole in 1734, and joined the opposition. In 1745 he was lord lieutenant of Ireland, where his conduct was discreet and very popular. He accepted the office of principal secretary of state in April 1746, which he resigned in 1748. He was intimate with Pope, Swift, Voltaire, Montesquieu, etc. His intercourse with Dr. Johnson was abruptly closed by a well-known indignant letter from the lexicographer. Chesterfield's fame as an author is founded chiefly on his "Letters to His Son," which appeared in 1774, and were admired for the beauty of the style and prized for the knowledge of the world which they teach. "Take out the immorality," says Dr. Johnson, "and it should be put into the hands of every gentleman." Lord Chesterfield wrote two numbers of "The World," and other brief productions, which were published under the title of "Miscellanies" in 1777. He died in 1773. His only son had died in 1768.—*Thomas' Biog. Dict.*

1. Appendix to Lord Waldegrave's Mem., p. 153.

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XXXIII. no reply, and a languid debate proved the paralysis of the House."¹

The qualities of the rival orators are well contrasted by my friend Mr. Welsby :

"In closeness of argument, in happiness of illustration, in copiousness and grace of diction, the oratory of Murray was unsurpassed ; and, indeed, in all the qualities which conspire to form an able debater, he is allowed to have been Pitt's superior. When measures were attacked, no one was better capable of defending them ; when reasoning was the weapon employed, none handled it with such effect ; but against declamatory invective his very temperament incapacitated him from contending with so much advantage. He was like an accomplished fencer, invulnerable to the thrusts of a small sword, but not equally able to ward off the downright stroke of a bludgeon."²

Nothing, however, gives us such an exalted opinion of the powers of both these extraordinary men as the praise of one who was himself an elegant speaker, who was their contemporary, who had often listened to them, who had no personal favor for either of them, and who loved much more to sneer than to flatter. Thus writes Lord Chesterfield to his son :

"Your fate depends upon your success as a speaker ; and take my word for it, that success turns more upon manner than matter. Mr. Pitt, and Mr. Murray the Attorney General, are, beyond comparison, the best speakers. Why ? Only because they are the best orators. They alone can inflame or quiet the House ; they alone are attended to in that numerous and noisy assembly, that you might hear a pin fall while either of them is speaking. Is it that their matter is better, or their arguments stronger, than other people's ? Does the House expect extraordinary information from them ? Not in the least ; but the House expects pleasure from them, and therefore attends ; finds it, and therefore approves."

Murray had some consolation for the troubles and anxiety he went through in the opportunities which his

1. Butler's Remains, i. 154.

2. Eminent Judges, p. 392.

influence with the Prime Minister gave him of obliging others. He was now able to procure for his friend Lord Milton¹ the appointment to the office of Lord Justice Clerk, the highest Criminal judge in Scotland; which he thus announced to him :

“Kenwood, Oct. 18, 1755. Letter to Lord Mil.

“My dear Lord,—I have just rec^d the favour of yours. If there was but a remote possibility that I could be of use in anything which concerned you and your family, I shou’d have reason to take it very ill if you did not let me know it. I happened to be with the Duke of Newcastle yesterday about 12 o’clock when the D. of Argyll’s² letter came. I think I may wish you joy of the thing being done. The Chan’ is at Wimple; but when I left the D. of N. he was determined to do it immediately without waiting to consult any body, therefore I need say no more, for I need not tell you how much I am

“Your aff. & ob. hu. serv^t

“W. MURRAY.”

Notwithstanding the *éclat* which Murray obtained from the contest he was carrying on in the House of Commons, and the power and patronage he enjoyed, he was most heartily sick of his position; and at the close of the session, in May 1756, he expressed deep regret that he had not adhered to the profession to which he was originally destined, so that he might have been vegetating unseen as the vicar of some remote parish. He often declared that he wished to have for his companions only the schoolmaster, the apothecary, and the exciseman; and that he desired to know nothing of

1. Andrew Fletcher, Lord Milton, a Scottish judge, nephew of the preceding, was born in 1692. He became a lord of session in 1724, and keeper of the signet in 1748. He was the confidential agent of the Duke of Argyll when the latter had the chief management of Scottish affairs. He is commended for his services in the promotion of commerce, manufactures, and agriculture. Died in 1766.

2. Archibald Campbell, Earl of Islay and third Duke of Argyll, born about 1682, was a brother of John, the second Duke. He had great influence in the political affairs of Scotland, and was for many years keeper of the great seal. Died in 1761.—*Thomas' Biographical Dict.*

CHAP. politics, except from a weekly newspaper taken in by
XXXIII. the village club.

After the prorogation, the state of affairs, instead of mending, became more disastrous. The Duke of Newcastle's imbecility had involved the country in hostilities with France,¹ and the war, which under other auspices was hereafter to be so glorious, began most unfortunately. Minorca was taken,—what was worse, the national honor was considered tarnished by the flight of Admiral Byng² without an effort to relieve Port St.

1. On the death of Pelham, Newcastle took his brother's place as head of the Treasury. He was at a loss for a leader in the Commons. Sir Thomas Robinson, a weak man, was appointed to lead the House. Pitt and Fox contrived to torment him, but Fox making terms with Newcastle, he contrived to get through the year. It was evident that war was at hand. Newcastle was quite incapable. He gave contradictory orders to the English admirals, and on the failure of Admiral Byng the popular outcry against him was so great that he was compelled to resign (1756). He immediately began to intrigue for office. On the failure of Pitt's administration, a complicated series of negotiations ensued. During eleven weeks there was no parliament. For a brief period Lord Waldegrave attempted to form a ministry. At length Pitt and Newcastle came to terms, and that strong government so gloriously known as Pitt's ministry was formed.—*Low and Pull. Dict. of Eng. H.*

2. Admiral John Byng (b. 1704, d. 1757) was the fourth son of Lord Torrington, and served at sea under his father. In 1756 he was sent out with a fleet of ten ships of war, poorly manned and in bad condition, with orders to relieve Minorca in case of attack. Only three days afterwards the French fleet attacked the Castle of St. Philip in that island. Byng arrived off St. Philip on May 19th, and tried in vain to communicate with the governor. On the following day the engagement took place. Rear-Admiral West on the right attacked the enemy with vigor, and drove them back; but Byng held aloof, and the action was indecisive. After a council of war, he sailed off to Gibraltar and left Minorca to its fate. Byng was brought home under arrest, and tried by court-martial. His judges acquitted him of treachery and cowardice, but it was decided that he had not done his utmost to relieve St. Philip, or to defeat the French fleet. He was recommended to mercy. Pitt in vain tried to induce the king to pardon him. Byng was shot at his own request on the quarter-deck of his ship in Portsmouth Harbor; he met his fate with great courage. Voltaire, who had tried to help him by sending him a laudatory letter of the Duke of Richelieu, says that he was slain "pour encourager les autres." It is probably true that Byng had not done as much as he might have done for the relief of Minorca.

Philip's ; and the clamor against the Government rose almost to frenzy. With what horror did Murray look to the reassembling of parliament ! How did he expect to quail under the vituperation of his rival ! At this time his situation certainly was very disheartening. There seemed to be no chance of any honorable retreat for him. Sir Dudley Ryder had only been Chief Justice of the King's Bench two years, and, being in a green old age, and likely long to fill the office, was about to be raised to the peerage.

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The day after Mr. Attorney General prepared the bill for the new barony, he heard that Sir Dudley Ryder was dead. Although he, no doubt, would have made every effort and submitted to any sacrifice for the purpose of preventing this catastrophe, we can hardly suppose that it excited no pleasurable feeling in his mind.

May 25.
Sudden
death of
Sir Dudley
Ryder.

He immediately put in his claim for the vacant office. All perceived that this promotion must bring about an immediate change in the Government. Charles Townshend,¹ then an Opposition leader, said to him,

Murray
claims the
office of
Chief Jus-
tice of the
King's
Bench.

But there can be no question as to the harshness and injustice of applying the severe penalties prescribed by the twelfth article of the naval code in the case of an officer who was rightly acquitted of treachery and cowardice. Though Byng was perfectly honest and sufficiently brave, it may, however, be conceded that he was wanting in capacity. "He trembled not at danger, but, like many other weak men in high places, he did tremble at responsibility."—*Low and Pull. Dict. of Eng. Hist.*

1. Charles Townshend, a statesman who, from the instability of his political opinions, has been termed the "Weathercock," was the second son of Charles, third Viscount Townshend, and was born Aug. 29, 1725. In 1747 he went into parliament as member for Yarmouth, for which he sat until 1761, when he was elected for Harwich and continued its representative till his death. On his entrance into public life he joined the Opposition, but his political connections soon brought him into office. In 1749 he was appointed a commissioner of trade and plantations; in 1750 a commissioner for executing the office of lord high admiral; in 1756 a member of the privy council; in 1761 secretary at war; in 1763 first lord of trade and plantations; in 1765 paymaster-general and chancellor of the ex-

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A.D. 1756.

Vain
efforts of
the Duke of
Newcastle
to induce
him to
remain in
the House
of Com-
mons.

"I wish you joy, Mr. Attorney; or, to speak truly, I may wish joy to myself, for you will ruin the Duke of Newcastle by quitting the House of Commons, and the Chancellor by going into the House of Lords."¹ The Duke of Newcastle, who, notwithstanding his general obtuseness, was very acute in such matters, declared that "the writ for creating Murray Chief Justice would be the death-warrant of his own administration," and resolved to try every possible expedient for the purpose of keeping him in the House of Commons. The negotiations (consisting only of earnest entreaties on one side, and flat refusals on the other) lasted several months, during which the Duke always rose in the tempting bribes which he offered,—beginning with the Duchy of Lancaster² for life, and, after tellerships and

chequer; and a lord of the Treasury in Aug., 1766; from which period he remained in office until his decease on Sept. 4, 1767. Burke, in his speech on the fatal scheme, reproduced by Townshend, of American taxation, pronounced a glowing eulogium upon him, declaring that "he was the delight and ornament of the House of Commons, and the charm of every private society which he honored with his presence."—*Cooper's Biog. Dict.*

1. Walpole's Mem., ii. 64.

2. The Duchy and County Palatine of Lancaster grew out of the *honor of Lancaster*, mentioned in *Magna Charta*, which, having reverted to the crown on the death of William of Blois, brother of King Stephen, had been granted to the Earls of Chester, and on their extinction in 1232, to William de Ferrers. After the second rebellion of Robert de Ferrers, Henry III. erected the honor into an earldom in favor of his son Edmund, afterwards called Crouchback. The Duchy was created by Edward III. in 1351 in favor of Henry, Edmund's grandson, and in his patent of creation the dignity of an earl palatine was conferred upon him. The latter title was also given in 1377 to John of Gaunt, Duke of Lancaster, who had married Henry of Lancaster's heiress. Henry IV., his heir, being conscious of the weakness of his title to the throne, prevented the union of the Duchy with the crown, by procuring an Act of Parliament, soon after his accession, providing that the title and revenues should remain with him and his heirs forever. Henry V. added to it the estates inherited from his mother, Mary Bohun; but a large part of it had to be put into the hands of trustees for the payment of his debts. On the attainder of Henry VI., after the accession of Edward IV., the Duchy was forfeited to the crown, and was inseparably united to it by Act of Parliament, the County Palatine, which

reversions without end for himself and his nephew Lord Stormont,¹ ending with the offer of a pension of 6000*l.* a year if he would only stay in the House of Commons till the address was carried and the new session fairly begun. Murray, who saw full well that, in spite of any exertions he could make, the Ministry must be beaten on the address, declared that "he would on no terms agree to remain in the House of Commons for one session longer, or one month, or one day even to support the address; and that he never again would enter that assembly." Horace Walpole, in his usual satirical tone, says, "He knew that it was safer to expound laws than to be exposed to them; and, exclaiming '*Good God! what merit have I, that you should load this country, for which so little is done with spirit, with the additional burthen of 6000*l.* a year?*' at last peremptorily declared that if he was not to be Chief Justice, neither would he any longer be Attorney General."

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had hitherto been kept separate, being incorporated in the Duchy. This settlement was confirmed by an act passed in the reign of Henry VII. The revenues of the Duchy are not reckoned among the hereditary revenues, in place of which the Civil List was granted to William IV. in 1830, but are paid over to the Privy Purse, an annual account being presented to parliament. Burke, in 1780, reckoned the average returns at 4000*l.* a year, but they have since increased. The Chancery Court of the County Palatine sat at Preston, the Duchy Court being held at Westminster. Their functions appear to have been defined by Henry IV. The Court of the Duchy was given concurrent jurisdiction with the Chancery as to matters in equity relating to lands holden of the crown in right of the Duchy, and was chiefly concerned in questions of revenue. By recent acts, the administration of justice has been assimilated to that of the rest of England, the Court of the County having been abolished by the Judicature Act of 1873. The office of Chancellor of the Duchy is now a political appointment, and is frequently held by a cabinet minister. Its duties are nominal. The Chancellor of the Duchy of Lancaster, if a commoner, takes precedence next after the Chancellor of the Exchequer.—*Low and Pull. Dict. of Eng. Hist.*

1. David Murray Stormont, Viscount, and Earl of Mansfield, a British statesman, born about 1728, was a nephew of the famous Lord Mansfield. He was ambassador at Vienna and at Paris. In the ministry formed by Fox and Lord North (1783) he was president of the council. Died in 1796.—*Thomas' Biog. Dict.*

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The Duke of Newcastle and the Lord Chancellor, who were equally desirous to keep Murray where he was, were at last so far overcome by his firmness as to offer him the office of Lord Chief Justice of the King's Bench, but stoutly made a difficulty about his peerage, in the hope that, not gaining all he desired, he might still change his mind. From the following letter to Lord Hardwicke it appears that there had been a good deal of discussion on this subject:

"June 26, 1756.

"My Lord,—I don't know whether the way in which I chose to express myself last night, when I said I had always considered the peerage & Ch. J. as going together, sufficiently conveyed that without the one I wished to decline all pretensions to the other.

"Upon reflexion, as I have no hesitation, & never thought otherwise, I think it the most decent way to speak to be understood; for it would grieve me extremely to have the King twice troubled in any respect on my account. No possible event can alter my anxiety for his ease or service.

"I beg once more to give vent to the sentiments of my heart by saying, that the sense of my obligations to your l^d will be as conspicuous as my friendship to the Duke of Newcastle, which can only end with the life of

"Y^r L^ds most obliged, & obd^t humble serv^t

"W. MURRAY."¹

The Duke of Newcastle, pretending that the King was very reluctant to grant the peerage, wrote thus to the Attorney General:

"Kensington, July 2, 1756.

"Dear Sir,—The King ask'd, whether I had seen *Murray*. I said, yes. 'Well, what says he?' 'Extremely sensible, Sir, of your Majesty's great goodness to him, but wishes not to accept the one without the other.' 'Why! must I be forced? *I will not make him a Peer till next session.*' 'Sir, all that Mr. Murray desires is, that they may be defer'd. I apprehend it would be difficult, tho' perhaps possible, to make the Chief

1. Hardwicke MSS., Wimple.

Justice this term.' 'I know, that may be delay'd ; or it is not necessary to do it now ;'—and here ended the discourse. I hope I have done right. I am sure I intended it ; but it is my misfortune to be distrusted by those from whom I never did deserve it.

I am, dear Sir,

"Ever yours,

"HOLLIS NEWCASTLE." ¹

Murray was evidently aware of the juggle, and declared that without the peerage he would neither accept the Chief Justiceship nor remain Attorney General.

If we may trust to the sincerity of the following letter from the Duke of Newcastle to Lord Hardwicke, his Grace had first given way :

"Was I singly to consult my own wishes, or, perhaps, my own interest, your Lordship knows what my thoughts are ; but when I consider that the present question is, whether Mr. Attorney-General shall remain in the House of Commons, *out of the King's service*, or be Ch. Justice, & a peer, I own I think the first would be attended with great inconveniencies to the King's service, & I should hope that His Majesty would be graciously pleased to grant his request, in consideration of the zeal & ability which he has shewed for a considerable number of years, in the employments with which His Majesty has honoured him."

It was pretty plainly perceived that if Mr. Murray were now refused his just demands he might be expected to be seen speedily in the House of Commons an Opposition leader ; and, the King's scruples being easily overcome, the Chancellor wrote to announce that Mr. Attorney was to be Chief Justice and a peer. The following is the cold, stiff, and hypocritical reply :

"Sunday night, Oct. 24, 1756.

"My Lord,—I am just come to town, and found your Lordship's letter. It is impossible to say how much I feel your Lordship's great goodness and attention to me throughout

1. Hardwicke MSS., Wimple.

CHAP. this whole affair. The business of my life at all times and on
XXXIII. all occasions shall be to show the gratitude with which I have
the honor to be

"Your Lordship's most obliged

"and ob^t hum : serv^t

"W. MURRAY."

Murray
Chief Jus-
tice of the
King's
Bench.

On Monday, the 8th day of November, 1756, Murray was sworn in Chief Justice of the King's Bench before Lord Chancellor Hardwicke, and created a peer by the title of Baron Mansfield, of Mansfield in the county of Nottingham. The following day the Administration to which he had belonged was dissolved ; but surely he is not to be blamed for the firmness which he exhibited in refusing to remain longer its champion in the House of Commons.

No party considerations could require from him a useless sacrifice ; and, for the welfare of the state, it was much better to bend to public opinion, and to make way for a new minister who might restore confidence and conduct the war in which England was involved to an honorable issue. Morally speaking, he had as good a right to the office which he demanded, as the eldest son has to the fee-simple lands of which his father died seised. He was by far the fittest man in the profession to fill it, and he had earned it by political services such as no law officer had ever rendered to any government.

The ap-
pointment
generally
approved

The appointment was almost universally praised. A very few illiberal individuals, trying as far as they were able to justify the imputation cast upon the English by Lord Lovat when he said that "his cousin Murray's birth in the north might mar his rise," grumbled because a Scotsman was placed at the head of the administration of justice in Westminster Hall, and tried invidiously to account for his rise by saying that "he had no merit beyond the dogged industry which dis-

tinguished his poverty-stricken countrymen;"¹ but all generous spirits frankly admitted his superiority for genius and acquirement, and scornfully repudiated the notion that, after the whole island of Great Britain had been united under a common legislature, regard was to be had, in filling any office under the crown, to the birthplace rather than to the qualifications of the candidate.

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Before following him in the new sphere which he entered, I ought to notice the graceful manner in which he concluded his career at the bar. To comply with ancient forms, it was necessary, as a preliminary step to his becoming a judge, that he should take upon himself the degree of the coif,² and be transferred from

His fare-
well ad-
dress on
taking
leave of
Lincoln's
Inn.

1. Thus was he assailed in a letter, addressed to the editor of a newspaper, supposed to have been written by a brother lawyer with whom he was on familiar terms of intimacy: "I should be sorry to see a Scotchman on an English bench of justice, for several reasons; which I hope may occur to the wisdom of the great in power before such judges are appointed, as it may not be very proper for me to mention them. An Englishman ought not to be put under the dominion of a Scot. It would prove an indelible reflection upon us to see a Scot in so high a station, when so many of our own countrymen are infinitely better qualified and more deserving of preference. I remember an old friend of mine used to tell me of 'a termagant Scot,' as Shakespeare phrases it, that domineered at the bar of one of our courts of justice, in the reign of one of our kings who was second of his name,—probably Charles or James the Second, for it is natural to believe the *plaid* might meet with encouragement here in these reigns. This Scot emerged from his native wealds, rocky caverns, and mountainous heights pretty early in life, to *fineer* over a Scotch education with a little English erudition, and undoubtedly for preferment too. He brought along with him the same principles of government and loyalty as his country and family were remarkable for, and what his brother carried over to Rome, like apples to Alcinous, or coals to Newcastle. One would think such an opportunity might have had some gentle influence on the rugged nature of our emigrant, his pauper pride and native insolence; but it happened otherwise, for the Scot could not alter his nature; and so, in the midst of all the learning of our courts, he continued still a very Scot."—*Broadbottom Journal*.

2. Sergeants-at-law were called serjeants of the coif, from the circumstance of the lawn coif which they wear on their head, under their caps, when they are elevated to that rank. It was originally

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Lincoln's Inn to Serjeants' Inn. The head of the society of which leave is taken, on this occasion, in a complimentary speech, addresses the retiring member,—who makes a suitable reply. The Honorable Charles Yorke (afterwards so brilliant in his life, and so unfortunate in his death) was then Treasurer of Lincoln's Inn. In presenting to the new Serjeant the votive offering of a purse of gold, he with good taste as well as warmth referred to the lustre he had conferred upon the English bar, and the qualifications he possessed for the high office to which he was appointed by the King with the most auspicious anticipations of the people. The following was the beautiful reply,—which, we are told by Mr. Holliday, who was present, was delivered “with the greatest grace, ease, and perspicuity”:¹

“I am too sensible, sir, of my being undeserving of the praises which you have so elegantly bestowed upon me, to suffer commendations so delicate as yours to insinuate themselves into my mind ; but I have pleasure in that kind of partiality which is the occasion of them. To deserve such praises is a worthy object of ambition ; and from such a tongue flattery itself is pleasing.

“If I have had, in any measure, success in my profession, it is owing to the great man who has presided in our highest courts of judicature the whole time I attended the bar. It was impossible to attend him, to sit under him every day, without catching some beams from his light. The disciples of Socrates, whom I will take the liberty to call the great lawyer of antiquity, since the first principles of all law are derived from his philosophy, owe their reputation to their having been the reporters of the sayings of their master. If we can arrogate nothing to ourselves, we can boast the school we were brought up in ; the scholar may glory in his master, and we may challenge past ages to show us his equal.

used to cover the crown of the head, which was closely shaved, and a border of hair left round the lower part, which made it look like a crown, and was thence called *corona clericalis*, or *tonsuram clericalalem*.

1. Holliday, p. 105.

"My Lord Bacon had the same extent of thought, and the same strength of language and expression ; but his life had a stain. CHAP. XXXIII.

"My Lord Clarendon had the same ability and the same zeal for the constitution of his country ; but the civil war prevented his laying *deep* the foundations of law, and the avocations of politics interrupted the business of the Chancellor.

"My Lord Somers came the nearest to his character ; but his time was short, and envy and faction sullied the lustre of his glory.

"It is the peculiar felicity of the great man I am speaking of, to have presided very near twenty years, and to have shone with a splendor that has risen superior to faction, and that has subdued envy.

"I did not intend to have said, I should not have said so much on this occasion, but that in this situation with all that hear me, what I say must carry the weight of testimony rather than appear the voice of panegyric.

"For you, sir, you have given great pledges to your country ; and large as the expectations of the public are concerning you, I dare say you will answer them.

"For the Society I shall always think myself honored by every mark of their esteem, affection, and friendship, and shall desire the continuance of it no longer than while I remain zealous for the constitution of this country and a friend to the interests of virtue."

Mr. Holliday, worked up to enthusiasm by the recollection of the scene he had witnessed, "bears ample testimony to the tribute of applause, to the general joy and the marked approbation of the audience."¹ On this occasion Mr. Sergeant Murray gave a grand dinner in Lincoln's Inn, rivalling the splendor of the olden time, to many of the nobility as well as to the chiefs of the law.²

1. Page 106.

2. The following is the Order issued by the Benchers for regulating the solemnity :

"At an Extraordinary Council, held the 2d day of November, 1756.

"Ordered—That the gates leading to Portugal Street, Chichester

CHAP. Rents, and Bishop's Court from Lincoln's Inn be shutt on Monday
XXXIII. next, from ten in the morning for the remaining part of that day.

"That the two great gates be shutt from ten in the morning for the remainder part of that day; and that six porters and two constables attend at each of those gates in order to lett in the nobility, judges, and other company who are to dine at the Serjeant's feast, as likewise to lett in the members of the Society and their friends.

"That the passage to the Hall be boarded up, and doors made as usual to lett the company into the Hall; and that two porters and a constable attend at each of those doors.

"That the garden gates be shutt all that day.

"That the gardener, his man, and two porters do patrole the terras walk, to prevent any person from coming over the wall.

"That Mr. Johnson, the steward to this Society, do hire twelve extraordinary porters, or such number of porters as shall be necessary to do the necessary duty on that day; and he do appoint the several porters to their several stations.

"That great care be taken that there be no disturbance or riott committed in the Inn on that day.

"That in case the porters or other servants do not keep good order, or are negligent in doing of their dutys, that Mr. Johnson do report their misbehaviour at the next council.

"That the cooks (Messrs. Davis and Cartwright) who are to dress the Serjeant's dinner have the use of the kitchen and all the offices belonging thereto, together with the furniture of the same; and that Mr. Johnson do intimate to them that they are to provide such chairs for the company as shall be wanting."

CHAPTER XXXIV.

VIEW OF LORD MANSFIELD'S JUDICIAL CHARACTER
AND OF HIS DECISIONS.

WE are now to behold Lord Mansfield a venerable magistrate, clothed in ermine, seated on his tribunal, determining the most important rights, and adjudicating upon the lives of his fellow-citizens. He presided in the Court of King's Bench for the first time on Thursday the 11th of November, 1756. Modern usage does not permit a judge to deliver an inaugural address, or we should have had from him a striking enumeration of the duties imposed upon the person filling this high office, and a masterly exposition of the manner in which they ought to be performed. Although he did not then delineate in the abstract the *beau ideal* of a perfect judge, he afterwards proved to the world by his own practice that it had been long familiar to his mind.

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A.D. 1756.
He takes
his seat in
the Court
of King's
Bench.

I feel the extreme difficulty of an attempt to present to my readers a view of Lord Mansfield's judicial character and of his decisions. I am disheartened by the utter failure of my predecessors;¹ but I must proceed at all risks, or this memoir would be compared to a life of Bacon omitting all mention of his philosophy,

Necessity
for a re-
view of
Lord
Mansfield's
judg-
ments.

1. No reader, professional or non-professional, can possibly get through the voluminous account of Lord Mansfield's judgments to be found in Holliday and Evans; and it has not suited the plan of any of the able writers who have given a sketch of Lord Mansfield's life to examine them, except in a very cursory manner.

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or of Marlborough¹ entirely passing over his campaigns. While the ensuing chapter may be entirely

1. John Churchill, Duke of Marlborough, prince of the Holy Roman empire, was born at Ashe, Devonshire, 1650, being the eldest son of Sir Winston Churchill, who has been already noticed in this work. He was educated at St. Paul's School, where he is said to have read Vegetius de Re Militari. At the age of twelve years, however, his father took him to court, where he became page to the Duke of York, and in 1666 obtained a pair of colors in the Guards. His first service was at the siege of Tangier; and in 1672 he was captain of Grenadiers under the Duke of Monmouth, with whom he served in the Low Countries, and distinguished himself so gallantly at the siege of Nimeguen as to attract the notice of the great Turenne, who called him the handsome Englishman. For his conduct at the siege of Maestricht he received the thanks of the French king at the head of the line. On his return to England he was made lieutenant colonel, also gentleman of the bedchamber, and master of the robes to the Duke of York, whom he attended to the Netherlands in 1679, as he afterwards did to Scotland. In 1681 he married Miss Sarah Jennings, who waited on the Princess Anne, by which match he greatly strengthened his interest at court. In 1682 he was shipwrecked with the Duke of York, in their passage to Scotland, on which occasion his royal highness expressed the utmost anxiety to save the colonel, who in the same year was made Baron of Eymouth. He still continued to be a favorite after the accession of James, who sent him ambassador, on that occasion, to France. In 1685 he was created Lord Churchill of Sandridge, and the same year he suppressed Monmouth's rebellion. He continued to serve King James with great fidelity, till the arrival of the Prince of Orange, and then left him, for which he has been severely stigmatized by several writers. After the revolution he was created Earl of Marlborough, and appointed commander-in-chief of the English army in the Low Countries. He next served in Ireland, where he reduced Cork, with other strong places. Notwithstanding these services, in 1692 he was suddenly dismissed from his employments, and committed to the Tower on a charge of treason, but soon obtained his release. After the death of Queen Mary he was restored to favor, and appointed governor to the young Duke of Gloucester. In 1700 he was made commander-in-chief of the English forces in Holland, where also he held the charge of ambassador. At the beginning of the next reign he received the order of the Garter, and was declared captain general of all the forces in England and abroad. The states general also gave him the supreme command of the Dutch troops; and in the campaign of 1702 he took a number of strong towns, particularly Liege, for which he received the thanks of both Houses, and was created Duke of Marlborough. In 1704 he joined Prince Eugene, with whom he gained the battle of Hochstet, taking Marshal Tallard prisoner. Just before this he had been created a prince of the empire. In the winter he returned to England, and again



JOHN CHURCHILL, DUKE OF MARLBOROUGH.

skipped by those who take interest only in personal anecdotes and party contests, it may be perused a second time by others who, knowing that the history of a country cannot be well understood without the study of its jurisprudence, are desirous of learning minutely what great magistrates actually did in administering justice to individuals and in aiming to improve the institutions over which they presided.¹

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Perhaps I ought to begin with considering the

received the thanks of parliament, with the grant of the manor of Woodstock and the hundred of Wotton. On May 12, 1706, he fought the battle of Ramillies, which victory accelerated the fall of Louvain, Brussels, and other important places. He arrived in England in November, and received fresh honors and grants from the Queen and parliament. A bill was passed to settle his honors upon the male and female issue of his daughters; and Blenheim House was ordered to be built, to perpetuate his exploits, besides all which he had a pension of 5000*l.* a year out of the post-office. The following campaign was inactive; but the ensuing one was pushed with such vigor that the French king was glad to enter into a negotiation for peace, which had no effect. In 1709 he defeated Marshal Villars at Malplaquet, for which victory a general thanksgiving was solemnized. In the winter of 1710 he returned to England, and soon after was dismissed from his employments, and even a prosecution was commenced against him for applying the public money to his private purposes. Stung by this ingratitude, he went abroad till 1714, when he returned and landed at Dover, amidst the acclamations of the people. Queen Anne was just dead, and her successor restored the duke to his military appointments; but his infirmities increasing, he retired from public employments, and died at Windsor Lodge, having survived his intellectual faculties, June 16, 1722, and his remains were interred with great solemnity in Westminster Abbey. The duke had four daughters, who married into the first families of the kingdom. His duchess died October 18, 1744. She was a woman of boundless ambition and avarice, having amassed more money than many sovereign princes. In 1742 she gave 5000*l.* to Mr. Hooke, to write a book entitled "An Account of the conduct of the Dowager Duchess of Marlborough." A selection of curious papers was published in 1788, by Lord Hailes, with this title: "The Opinions of Sarah, Duchess of Marlborough."—*Cooper's Biog. Dict.*

1. Gibbon's masterly sketch of the Roman Civil Law (*Decline and Fall*, c. xlv.) is one of the most interesting parts of his great work. But I am afraid that I shall be supposed as much enamored of my craft as was of his the old minstrel who

"Poured to lords and ladies gay
The unpremeditated lay."

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Was he a
great
judge?

question "whether Lord Mansfield was indeed a great magistrate." I remember the time when it was fashionable in Westminster Hall to mention his name with a sneer. One might have supposed that he was chiefly memorable for having tried to introduce into the Common Law some "equitable doctrines" which had been rejected, and that, having long imposed upon the world by his plausibility, he was at last discovered to have been ignorant and shallow. English lawyers in those days chose to take their opinions of him from two men, deeply versed in their profession, but entirely devoid of all other learning,—who not only had no taste for his liberal acquirements, but actually bore him a deep personal grudge. Lord Eldon, having begun to practise in the Court of King's Bench under Lord Mansfield, took it into his head that the Chief Justice set his face against all except those who had been educated at Westminster and Christ Church; and he left the court with disgust, ever loudly and deeply cursing the supposed author of his early disappointment. Again, Lord Kenyon with some reason mortally hated his predecessor, who had strenuously opposed his appointment, because he did not wish to see in the seat of Chief Justice of England one who did not know the characters of the Greek language, and of Latin knew only some scraps to be misquoted. Their hostility to the memory of Mansfield was sharpened by their common dislike of Buller,¹ who, reverencing him to idolatry, was in the habit of drawing offensive comparisons between him and his detractors. The influence of the

1. Sir Francis Buller, an English judge, born 1745, received his education at Winchester School, and was afterwards called to the bar at the Inner Temple. He was made a justice of the King's Bench 1788; removed to the Common Pleas 1794; created a baronet 1789; and died June 4, 1800. He was author of a valuable "Introduction to the Law relative to Trials at Nisi Prius."—*Cooper's Biog. Dict.*



Lord Chancellor and of the Chief Justice was much greater than that of the disappointed *puisne* who had sought refuge in the obscurity of the Common Pleas, and those who were desirous of having "the ear of the Court" on either side of the Hall knew that they could in no way recommend themselves to favor more effectually than by talking of "the loose notions which had lately prevailed in certain quarters, and which were in the course of being happily corrected." The juniors took their tone from the leaders, and in the debating clubs of students in the Inns of Court the speakers were inflamed by a pious desire to restore the Common Law to its ancient simplicity.

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But these delusions are no more; and Mansfield may now be compared to the unclouded majesty of Mont Blanc when the mists which for a time obscured his summit have passed away.

There are a few undeniable facts, which are quite conclusive to prove that he enjoyed an unparalleled ascendancy, and that this ascendancy was well deserved. Although he presided above thirty years in the Court of King's Bench, there were in all that time only two cases in which his opinion was not unanimously adopted by his brethren who sat on the bench with him. Yet they were men of deep learning and entire independence of mind. He found there Sir Thomas Denison, Sir Michael Foster,¹ and Sir John Eardly Wilmot, who

His unparalleled ascendancy in Westminster Hall.

1. Michael Foster was of legal descent, both his father and grandfather being attorneys in the town of Marlborough, with the reputation, eminently deserved, of being honest lawyers. He was born on December 16, 1689, and after attending the free school at Marlborough entered Exeter College, Oxford, in May 1705, and was called to the bar at the Middle Temple in May 1713. In 1720 he published "A Letter of Advice to Protestant Dissenters," to which class his family belonged. Little known in Westminster Hall, he pursued his profession principally as a provincial counsel, first in his native town, and then at Bristol, to which city he removed after his marriage in 1725 with Martha, daughter of James Lyde, of Stantonwick in its neighborhood. In 1735 he issued a learned tract

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was afterwards Chief Justice of the Common Pleas, and refused the great seal. They were succeeded by Sir Joseph Yates;¹ Sir Richard Aston,² who had been Chief Justice of the Common Pleas in Ireland; Sir James Hewitt,³ afterwards Lord Chancellor of Ireland, and a

entitled "An Examination of the Scheme of Church Power, laid down in the Codex Juris Ecclesiastici Anglicani," which went through several editions, and of course led to a controversy on ecclesiastical law. In August of the same year he was appointed recorder of Bristol, and took the degree of sergeant in the following Easter term. On April 22, 1745, he was sworn in as a judge of the King's Bench, and knighted, and for the long period of eighteen years he maintained the high judicial character he had established as Recorder of Bristol. He was equally distinguished for his learning, his integrity, his firmness, and his independence. Three of his contemporaries who practised under him, and afterwards gained eminence as judges, have given testimony of his excellence. Lord Chief Justice De Grey says of him, "He may truly be called the Magna Charta of liberty of persons as well as of fortune." (3 *Wilson*, 203.) Sir William Blackstone (*Commentaries*, iv. 2) alludes to him as "a very great master of the crown law"; and Lord Thurlow, in a letter written in 1758, describes his spirited conduct in the trial of an indictment for a nuisance in obstructing a common footway through Richmond Park. He died on November 7, 1763, and was buried in the church of Stanton Drew.—*Foss's Lives of Judges*.

1. Jan. 24, 1763.

2. April 5, 1765.

3. Nov. 1, 1766. James Hewitt, Viscount Lifford (1709-1789), Lord Chancellor of Ireland, born in Coventry in 1709, was the son of William Hewitt, a mercer and draper, who was in 1744 mayor of Coventry. With the view of becoming an attorney, he served his time with James Birch of the same place, Receiver General for the County of Warwick, but soon after resolved to join the bar, entered the Middle Temple in 1737, and was called in November 1742. Before long he secured a considerable share of business. He stood for Coventry unsuccessfully in 1754, but was returned for the borough at the general election in 1761. His legal success had procured him in 1755 the dignity of the coif, and four years after the position of King's Sergeant. He was a ponderous speaker. Charles Townsend, when leaving the house one day, was asked "whether the house was up." "No," he replied, "but the sergeant is." On Nov. 6, 1766, Hewitt was appointed to a vacant judgeship in the King's Bench, with the promise of further promotion, and on Jan. 9, 1768, received his patent as Lord Chancellor of Ireland. On the same day he was created Baron Lifford in the Irish peerage, and he was advanced to a viscountcy in January 1781. Lifford was Lord Chancellor of Ireland during the struggle between the two parliaments which resulted in the short-lived independence of the Irish legislature. He held the great seal for twenty-two years, longer than any of his predecessors

peer by the title of Lord Lifford ; Sir Edward Willes ;¹ CHAP.
Sir William Blackstone ;² Sir William Henry Ashurst ;³ XXXIV.

from the time of Edward I. Having amassed a considerable fortune, the emoluments of the office in his time being estimated at 12,000*l.* per annum, he intended to resign on a pension, but died in Dublin on April 28, 1789, of a severe cold caught at the House of Lords. He was the first Lord Chancellor of Ireland whose judgments have been preserved.—*Stephen's Nat. Biog.*

1. Jan. 27, 1768. Edward Willes was the second son of the above, and was called to the bar at Lincoln's Inn in February 1726. He is often confounded with his namesake, who was Lord Chief Baron of the Irish Exchequer from 1757 to 1766, and who died in 1768. He acquired the rank of King's Counsel in 1756 ; and in 1766, five years after his father's death, he was made Solicitor General. On the death of Lord Bowes, Chancellor of Ireland, in 1767, attempts were made to confer that appointment upon him ; but he was obliged to content himself with a seat in the King's Bench, to which he was promoted on January 27, 1768. Soon after the questions relative to Mr. Wilkes came before the court, exciting the public to an intense degree. The judges were unanimous in their opinion on the various points raised in his favor, and, though they were then charged with corrupt bias, calmer times have confirmed their judgment. In the Dean of St. Asaph's case Mr. Justice Willes dissented from the other judges, and his declaration that juries had the right to give a general verdict was one of the causes which led to the passing of Mr. Fox's libel act. Mr. Justice Willes did not accept the usual honor of knighthood. He outlived all his first colleagues except Lord Mansfield, and after nineteen years of judicial life, unmarked by any other peculiar characteristics than a certain flippancy of manner and a neglect of costume, he died on January 14, 1787, and was buried at Burnham in Berkshire.—*Foss's Lives of the Judges.*

2. April 3, 1770.

3. April 10, 1770. William Henry Ashurst (1725–1807), judge, belonged to the Lancashire family, the Ashursts of Ashurst or Ashhurst. One of his ancestors was Henry Ashurst the philanthropist, and another was Lord Mayor of London in 1693. Sir William Ashurst was educated at Charter House. He was admitted to the Inner Temple on Jan. 19, 1750. He practised for some years as a special pleader ; and Mr. Justice Buller was one of his pupils. He was called to the bar on February 8, 1754, and was made a sergeant in 1770. On June 25 of the same year, on the removal of Sir William Blackstone to the Common Pleas, he succeeded him as a judge of the King's Bench, in which court Lord Mansfield then held undisputed sway. Mr. Justice Ashurst's judgments, which are reported in Lofft's and Douglas's "Reports," and Chitty's "Practice Cases," are remarkable for their clearness and good sense. Being highly esteemed as a lawyer, Sir William Ashurst was twice one of the commissioners intrusted with the great seal, which he held from April 9, 1783, to December 23 of the same year, and from June 15, 1792, to January 28, 1793.

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Sir Nash Grose;¹ and Sir Edward Buller.² Again, of the many thousand judgments which Lord Mansfield pronounced during the third part of a century, two only were reversed. The compliment to Chancellors that their decrees were affirmed amounts to very little, for the only appeal is to the House of Lords, where the same person presides, so that it may be considered *ab eodem ad eundem*.³ But a writ of error then lay from the King's Bench either to the Exchequer Chamber, constituted of the Judges of the Common Pleas and Exchequer, or to the House of Lords, to be heard before the Lord Chancellor and all the Judges of England, without any predisposition to affirm.⁴ What will appear to my professional brethren a more striking fact still, strongly evincing the confidence reposed in his judicial candor and ability by such men as Dunning⁵ and Erskine, opposed to him in politics, who

On June 9, 1799, he resigned his office, and retired to his house at Waterstock, in Oxfordshire, where he died on November 5, 1807.—*Stephen's Nat. Biog.*

1. Feb. 9, 1777. Sir Nash Grose (1740–1814), judge, son of Edward Grose of London, was born in 1740. He went to Cambridge, became a fellow of Trinity Hall, and took the degree of LL.B. in 1768. He was called to the bar at Lincoln's Inn in November 1766, and became serjeant-at-law in 1774. For many years he enjoyed the best practice in the Court of Common Pleas. On February 9, 1787, he was appointed a judge of the King's Bench, and was knighted. Both personally and as a judge he earned the respect and esteem of his contemporaries. His growing infirmities compelled his resignation during the Easter vacation, 1813, and on May 31, 1814, he died at his seat, the Priory, in the Isle of Wight.—*Stephen's Nat. Biog.*

2. April 6, 1778.

3. "From the same to the same."

4. At first starting, the holder of the great seal (Lord Keeper Henley) had no voice in the House of Lords; but when created Lord Northington he might have revenged himself for his decrees which had been upset with Lord Mansfield's concurrence. Then followed Lord Camden, a Whig Chancellor; and, although the two following Chancellors, Lord Bathurst and Lord Thurlow, were Tories, they bore no peculiar personal good-will to the Chief Justice of the King's Bench.

5. John Dunning, an eminent lawyer, was the son of an attorney at Ashburton, in Devonshire. After studying under his father

practised before him,—in all his time there never was a bill of exceptions tendered to his direction; the counsel against whom he decided either acquiescing in his ruling, or being perfectly satisfied that the question would afterwards be fairly brought before the Court and satisfactorily determined on a motion for a new trial.¹ I must likewise observe that the whole community of England, from their first experience of him on the bench, with the exception of occasional displays of party hostility, concurred in doing homage to his extraordinary merits as a judge. Crowds eagerly attended to listen to him when he was expected to pronounce judgment in a case of importance. To gratify public curiosity, the unknown practice began of reporting in the newspapers his addresses to juries; and all suitors, sanguine in their belief of being entitled to succeed, brought their causes to be tried before him, so that the business of the King's Bench increased amaz-

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some time, he entered the Middle Temple in 1752, and in 1756 was called to the bar. He soon rose to distinction in his profession, and obtained a seat in parliament, where he distinguished himself on the side of the Opposition. Afterwards he became Solicitor General, Recorder of Bristol, and Chancellor of the Duchy of Lancaster. In 1782 he was created Lord Ashburton, but died in the following year. Born at Ashburton, Devonshire, 1731. His lordship was an upright lawyer, and often pleaded the cause of the poor, unsolicited, and without a fee.—*Beeton's Biog. Dict.*

1. When I was at the bar, I knew a learned sergeant who never went into court without several blank bills of exceptions in his bag, or rather cartouche box, to be filled up and fired off at the Chief Justice in the course of the morning. I should state, for the information of my unlearned readers (or the *lay gents*), that a bill of exceptions is given by the statute of Westminster passed in the reign of Edward I., and is an admirable check on the rashness and mendacity of judges; for it empowers the parties to put down in writing the exact terms in which the judge who tries the cause has laid down the law, and subjects him to an action if he does not acknowledge it by his seal. It then goes, by writ of error, before a superior tribunal, where his ruling is reconsidered, and may be either affirmed or reversed. On a motion for a new trial, the judge at his discretion states verbally how he laid down the law, no averment being allowed against his statement; and the question cannot be carried before a higher court.

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ingly, while that of the other courts of common law dwindled away almost to nothing. He was regarded, if possible, with still greater veneration in his native country, where they were not only proud of him for adding new lustre to the name of Scotsman, but grateful for the admirable manner in which, as a law lord in the House of Peers, he revised and corrected the decisions of their supreme court, giving new consistency and certainty both to their feudal and commercial code. Even the learned on the continent of Europe, who had hitherto looked upon English lawyers as very contracted in their views of jurisprudence, and had never regarded the decisions of our courts as settling any international question, acknowledged that a great jurist had at last been raised up among us, and they placed his bust by the side of Grotius and D'Aguesseau.¹ In his own lifetime, and after he had only a few years worn his ermine, he acquired the designation by which he was afterwards known, and by which he will be called when, five hundred years hence, his tomb is shown in Westminster Abbey—that of “THE GREAT LORD MANSFIELD.”

1. Henri Francois D'Aguesseau, a celebrated French Chancellor, orator, and legislator, was born at Limoges, November 27, 1668. He passes for the most learned lawyer that France ever produced, and is called the father of French forensic eloquence. In 1691 he was appointed by Louis XIV. one of the advocates-royal. He became procureur-général to the parliament in 1700, and Chancellor of France in 1717. Before the latter date he had resolutely defended the liberties of the Gallican Church against the aggressions of the papal power in the case of the bull *Unigenitus*, 1713. He was banished from court in 1718 for his opposition to the financial system of law, but was restored to his high functions in 1720, after the ruinous collapse of that system. A contest for precedence between D'Aguesseau and Cardinal Dubois resulted in the removal of the former from office in 1722. He was again appointed chancellor in 1737, and kept the seals until 1750, when he resigned on account of his great age. Died in Paris in February, 1751. His works, consisting chiefly of forensic arguments, official papers, and treatises on law, were published in thirteen volumes (1759-89). His legislative reforms con-

Therefore, notwithstanding the successful efforts of a few narrow-minded and envious persons to disparage him soon after his death, I think I must be justified in giving faith to the unanimous opinion of his contemporaries in his favor, and I may go on with confidence to explain by what means he gained the high reputation which he enjoyed.

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The moving power which worked such marvellous effects was his earnest desire worthily to discharge the duties of his office, that he might thereby serve his country and make his own name be remembered and honored.¹ Men even of great talents and acquirements have felt their ambition satisfied simply by being placed in a high judicial office, the dignity and emoluments of which they were entitled to hold for life, unless there should be an address to the Crown by the two Houses of Parliament for their removal. These considered merely how they could get on with least trouble to themselves,—taking care to avoid every appearance of recklessness which might cause open scandal and create a danger of public censure. Mansfield, with little enthusiasm in his nature, had one ruling passion, which did not work by fits, but was strong, constant, and insatiable. On the day of his inauguration as Chief Justice, instead of thinking that he had won the prize of life, he considered himself as only starting in the race.

His passionate
love of the
duties of
a judge.

My readers are already acquainted with some of the requisites he possessed for this noble undertaking:—his quickness of perception—his logical understanding

stitute perhaps his greatest claim to the remembrance of posterity.
—*Thomas' Biog. Dict.*

1. He was not merely pleased at the moment with the occupation of trying causes, as some are with hunting and others with angling. When M. Cottu, the French advocate, went the Northern Circuit, and witnessed the ease and delight with which Mr. Justice Bayley got through his work, he exclaimed, "Il s'amuse à juger;" and Judge Buller used to say, somewhat irreverently, that "his idea of Heaven was to sit at Nisi Prius all day, and play at whist all night."

CHAP. XXXIV. --his scientific acquaintance with jurisprudence—his great experience in business from having been nearly twenty years at the head of his profession—his resoluteness of purpose—and his unwearied power of application. All these might have been insufficient, but he quickly showed that, seated on his tribunal, he was patient, courteous, firm, decided in his opinions, possessed of unexampled powers of despatch without ever appearing to be in a hurry, capable of explaining his judgments with admirable precision and perspicuity, and not only unswayed by awe of power or love of popularity, but free from the besetting sin of being unduly under the influence of counsel either from favor or from fear.

Reforms of
procedure
introduced
by him.

He began with certain reforms in the practice of his court, which I must mention as they materially contributed to his success, although their importance cannot be properly perceived by the uninitiated. His first bold step was to rescue the bar from the monopoly of the leaders. Day by day, during the term, each counsel when called upon had been accustomed to make as many motions successively and continuously as he pleased. The consequence was, that by the time the Attorney and Solicitor General, and two or three other DONS, had exhausted their motions, the hour had arrived for the adjournment ; and as the counsel of highest rank was again called to at the sitting of the court next morning, juniors had no opportunity of making any motions with which they might be intrusted till the last day of term, when it was usual, as a fruitless compliment to them, to begin with the back row—after the time had passed by when their motions could be made with any benefit to their clients. The consequence was, that young men of promise were unduly depressed, and more briefs were brought to the leaders than there was time for them to read, even had they been toiling

all night at their chambers instead of sitting up in the House of Commons absorbed in party struggles. Thus the interests of the suitors were in danger of being neglected, and the judges did not receive the fair assistance from the bar in coming to a right conclusion which they were entitled to expect. To remedy these evils, a rule was made that the counsel should only make one motion apiece in rotation; and that if by chance the court rose before the whole bar had been gone through, the motion should begin next morning with him whose turn it was to move at the adjournment. The business was thus both more equally distributed and much better done.

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A bad practice had prevailed, that almost all cases turning upon questions of law which came before the judges sitting *in banco* were argued two or three and even as often as four times over in successive terms, although not attended with any real difficulty—a further argument being ordered, almost as a matter of course, at the request of the party who apprehended that the inclination of the court was against him. Lord Mansfield always refused a second argument, unless the court entertained serious doubts, which were likely to be better cleared up by further discussion at the bar than by an immediate examination of the authorities and by private deliberation.

The custom likewise had been to abstain from deciding at the close of the argument,—there hardly ever being a judgment entered without several entries of *curia advisari vult*,¹—whereby not only was expense increased and justice delayed, but the judges had often forgotten the reasons and authorities brought forward at the bar before publicly declaring their opinion. In *Raynard v. Chace*,² which was argued for the first time

1. "The court wishes to deliberate."

2. Burr., vol. i. p. 1.

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the day after Lord Mansfield took his seat on the bench, the counsel and the attorneys, who expected as a matter of course that there would be divers hearings and long consultations before the Judges would venture to pronounce their decision, were astounded to hear the new Chief Justice say that "the Court, having no doubts on the subject, considered itself bound as well to spare the parties the expense and anxiety of further discussion, as to terminate the suspense of others who might be interested in the question to be decided, and would accordingly proceed to give judgment at once." But he was cautious as well as ready, and, wherever the occasion required, he was eager to receive any new lights which could be thrown on obscure points of law by the researches and the ingenuity of counsel.

During Lord Mansfield's time, an evil was remedied which I am sorry to say had been revived before I was called to the bar, and, I am afraid, still inveterately exists—the delay experienced in preparing a special case or statement of the facts in evidence on a trial before a jury, when it is found that the rights of the parties depend upon a question of law, and it is agreed that these facts shall be stated for the opinion of the judges. When such a statement is afterwards to be drawn up by the counsel on opposite sides,—from their multiplied engagements, or from their indolence and love of procrastination, and still more from their pugnacity and excessive zeal to benefit and please their clients,—great danger arises of long delays and vexatious discussions before a final hearing can take place. Lord Mansfield himself dictated the statement in open court, and it was signed by the counsel before the jury were discharged. He further ordered that the case should be invariably entered for argument within the first four days of the ensuing term, so that judgment was sure to be pro-

nounced within a few months from the time when the action was originally commenced. CHAP.
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He also made a general order that no cases should be postponed, even with the consent of the parties, without the express authority of the court; and cases so postponed were appointed to come on *peremptorily* at the beginning of the following term.

By these regulations, the heavy arrears which he found on taking his seat were soon cleared away; and afterwards, during the whole period of his Chief Justiceship, at the end of every term every case had been disposed of that was ripe for being heard and decided. A.D. 1756-
1787.

But there was no complaint of precipitation or affected despatch; and, to show that the satisfactory administration of justice was the only object in view, instead of determining cases sent to the Court of King's Bench from the Court of Chancery by a written answer, simply saying *aye* or *no*, called a "certificate," Lord Mansfield introduced and continued the practice of giving an elaborate judgment on these occasions *viva voce*, fully explaining the reasons and authorities on which his opinion was founded.¹

I ought likewise to mention the improvements he introduced in the trial of causes at *Nisi Prius*. Hitherto it had been usual for all the counsel on each side, if they were so disposed, to address the jury, and much irregularity prevailed in examining and cross-examining the witnesses. By his care the system which we now follow was gradually matured; and, although liable to some objections, it is probably as well adapted as

1. Lord Mansfield: "I found it a custom in cases sent by the Court of Chancery for our opinion, to certify it privately to the Lord Chancellor in writing, without declaring in this court either the opinion itself or the reasons upon which it is grounded. But I think the custom wrong as well as unsatisfactory to the bar." (*Cowp.* 34.) Lord Kenyon returned to it, however, because Lord Eldon was disposed to carp and jeer at his *reasons*.

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any that could be devised for the fair investigation of truth, as well as for celerity. According to this, the junior counsel for the plaintiff having "opened the pleadings," or stated the issues or questions of fact raised by the record for decision, the leading counsel for the plaintiff alone addresses the jury; the plaintiff's evidence follows; the defendant's legal counsel then addresses the jury, and, if he gives no evidence, the debates at the bar here close; but if there be evidence given for the defendant, the plaintiff's leading counsel addresses the jury by way of reply. The judge then sums up, and the jury pronounce the verdict. Lord Mansfield hesitated long about making the right to reply depend upon the giving of evidence by the defendant, as thereby, to avoid a reply, important evidence is sometimes kept back, and inconvenience follows from the defendant's counsel having the privilege of speaking without any answer from his antagonist; but *his* masterly superintendence and great authority kept everything straight, and, while he presided, trial by jury in civil cases, which in theory appears so absurd, and which answers so badly in Scotland and other countries in which it is not understood, seemed a perfect invention for the administration of justice.

These are little more than matters of *procedure*, which, however wisely devised, could not of themselves have deserved any lasting praise. I now come to the principles which guided him as a judge, and which have made his name immortal.

Improvements,
founded on
principle,
which he
contem-
plated.

He formed a very low, and I am afraid a very just, estimate of the Common Law of England which he was to administer. This system was not at all badly adapted to the condition of England in the Norman and early Plantagenet reigns, when it sprang up,—land being then the only property worth considering, and the wants of society only requiring rules to be laid

down by public authority for ascertaining the different rights and interests arising out of land, and determining how they should be enjoyed, alienated, and transmitted from one generation to another. In the reign of George II., England had grown into the greatest manufacturing and commercial country in the world, while her jurisprudence had by no means been expanded or developed in the same proportion. The legislature had literally done nothing to supply the insufficiency of feudal law to regulate the concerns of a trading population; and the Common Law judges had, generally speaking, been too unenlightened and too timorous to be of much service in improving our code by judicial decisions. Hence, when questions necessarily arose respecting the buying and selling of goods,—respecting the affreightment of ships,—respecting marine insurances,—and respecting bills of exchange and promissory notes, no one knew how they were to be determined. Not a treatise had been published upon any of these subjects, and no cases respecting them were to be found in our books of reports,—which swarmed with decisions about lords and villains,—about marshalling the champions upon the Trial of a writ of right by battle,¹—and about the customs of

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1. Trial by battle was also called *wager of battel* or *battaile*, and could be claimed in appeals of felony. It was of frequent use in affairs of chivalry and honor, and in civil cases upon certain issues. Coke Litt. § 294. It was not abolished in England till the enactment of Stat. 59 Geo. III., c. 46. See 1 B. & Ald. 405; 3 Bla. Com. 339; 4 Id. 347, Appeal. This mode of trial was not peculiar to England. The Emperor Otho, 983, held a diet at Verona, at which several sovereigns and great lords of Italy, Germany, and France were present. In order to put a stop to the frequent perjuries in judicial trials, this diet substituted in all cases, even in those which followed the course of the Roman law, proof by combat for proof by oath. Henrion de Pansey, *Auth. Judic.* Introd. c. 3. And for a detailed account of this mode of trial, see Herbert, *Inns of Court*, 119–145, *Bouvier's Law Dict.*

The following is an account of a trial by battle on a writ of right

CHAP. manors, whereby an unchaste widow might save the
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which took place in the thirteenth year of Queen Elizabeth, and is reported in Sir James Dyer's Reports, 301 a.

Students of Blackstone will remember that, under the older common law, the last resort of one who claimed the fee simple of property against a person in possession was a writ of right. In this action it was the privilege of the defendant, or tenant as he was called, in contradistinction to the demandant or plaintiff, to refer his cause to trial by battle; that is, instead of the ordinary method of decision by a jury after a legal duel of counsel, the judges decided after a physical duel between champions of the respective parties. The champion of the plaintiff had the burden of proof, and unless he defeated the defendant's champion before sundown (in strictness the battle began at sunrise) decision was given for the defendant. In the case of *Lowe v. Paramour*, the tenant Paramour, as Sir James Dyer reports, "chose the trial by battle, and his champion was one George Thorne; and the demandants *e contra*, and their champion was one Henry Nailer, a master of defense. And the court awarded the battle; and the champions were by mainprise (that is, gave security by mainpernors for their appearance) and sworn (quære the form of the oath) to perform the battle at Tothill, in Westminster, on the Monday next after the morrow of the Trinity, which was the first day after the Utas of the Term (That is, on the 8th day after the end of the term), and the same day given to the parties; at which day and place a list was made in an even and level piece of ground, set out square, s. sixty feet on each side due East, West, North, and South, and a place or seat for the Judges of the Bench was made without and above the lists, and covered with the furniture of the same Bench in Westminster Hall, and a bar made there for the serjeants at law. And about the tenth hour of the same day, three Justices of the Bench, s. Dyer, Weston and Harper, Welshe being absent on account of sickness, repaired to the place in their robes of scarlet, with the appurtenances and coifs; and the serjeants also. And there public proclamation being three times made with an Oyes, the demandants first were solemnly called, and did not come. After which the mainpernors of the champion were called, to produce the champion of the demandants first, who came into the place apparelled in red sandals over armour of leather, bare-legged from the knee downward, and bareheaded, and bare arms to the elbow, being brought in by the hand of a Knight, namely Sir Jerome Bowes, who carried a red baston of an ell long, tipped with horn, and a Yeoman carrying a target made of double leather; and they were brought in at the north side of the lists, and went about the side of the lists until the midst of the lists, and then came towards the bar before the Justices with three solemn congies, and there was he made to stand at the fourth side of the place, being the right side of the Court; and after that, the other champion was brought in like manner at the south side of the lists, with like congies, &c. by the hands of Sir Henry Cheney, Knight &c. and was set on the north side of the bar;

forfeiture of her dower by riding on a black ram and in CHAP.
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and two Serjeants being of counsel of each party in the midst between them : this done, the demandant was solemnly called again, and appeared not, but made default ; upon which default, Barham, Serjeant for the tenant, prayed the court to record the nonsuit ; which was done. And then Dyer, Chief Justice reciting the writ, count, and issue, joined upon battle, and the oath of the champion to perform it, and the fixing of the day and place, gave final judgment against the demandants, and that the tenant should hold the land to him and his heirs for ever, quit of the said demandants and their heirs for ever ; and the demandants and their pledges to prosecute, in the Queen's mercy, &c. And then solemn proclamation was made, that the champions and all others there present (who were by estimation above four thousand persons) should depart, every man in the peace of God and the Queen. And they did so, *cum magno clamore 'vivat Regina.'*"

It will be observed that Chief Justice Dyer, with true legal caution, queries the form of the oath taken by the champions ; but Blackstone tells us that, after each champion had taken an oath as to the merits of his case which placed them thoroughly at issue, each took the following oath against enchantments : "Hear this, ye justices, that I have this day neither eat, drank, nor have upon me neither bone, stone, nor grass ; nor any enchantment, sorcery, or witchcraft, whereby the law of God may be abased or the law of the devil exalted. So help me God and his Saints."

Judgments by default are frequently very unsatisfactory, but in the whole course of legal history we know of none to be so much regretted as this of *Lowe v. Paramour*. How much additional interest would have been imparted to the pages of the venerable chief justice could he have described the legal set-to between the worthy champions, George Thorne and Henry Nailer ! One would like to know, too, why it was that the demandant made default. Surely the reason could not be found in any doubt as to the brawn and skill of that "master of defense," Henry Nailer. Be this as it may, a default was taken on that summer day in the year of grace 1571, and the four thousand spectators and the learned judges and sergeants, who had gossiped about the event beforehand, and assembled with expectation raised to the keenest point, were deprived of an imposing sight. Doubtless there was very little spirit in those shouts of "Long live the Queen !" given by the departing crowds.

Another trial by battle in a writ of right, which took place in the first year of Henry VI., A. D. 1422, is detailed at considerable length in Brooke's Abridgment, and some curious particulars are there mentioned. There the Earl of Northumberland, who was the tenant, made default. But we will only pause to record that it was adjudged per Martin that the bastions of the champions ought to have a knob at the end, as in the case of approvers.

The case of *Lowe v. Paramour* was the last example of a trial by battle in a writ of right in the court of Common Pleas. But there

CHAP. plain language confessing her offence.¹ Lord Hard-
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was one in the year 1638 in the county Palatine of Durham. Of this however, the legal reports only inform us that the champions confessed, on examination before Berkeley, J., that they were hired for money, and after due advisement by all the judges it was determined that the battle having been gaged and champions allowed and sureties given to perform it, this was not "cause to deraign the battle by these champions." *Claxton v. Libourn*, Cro. Car. 522.

Even in the time of Queen Elizabeth this method of trial in a writ of right was obsolete, and Sir Henry Spelman, who was a spectator of the ceremonies in *Lowe v. Paramour*, tells us that the trial took place "*non sine juris consultorum purtabatione*."

But though trial by battle in civil cases was thus early abandoned, the same method of determining appeals of death lasted as a right in English law until 1819, and was swept away by statute then only as a result of the case of *Ashford v. Thornton*, 1 B. & Ald. 405. Appeals of death were a curious survival of the primitive times when all law was a matter of private vengeance. They were private actions brought by a wife for the death of her husband, or by an heir male for the death of his ancestor. The defendant or appellee might, at his option, select trial by battle, which in this case was waged, not by champions, but by the appellor and appellee in person. If the appellor was successful in an appeal of death, the appellee was executed as upon his conviction for murder, with the singular exception that, according to ancient usage, he was dragged to the place of execution by the relations of the slain.

One consequence of these appeals, being private actions, was that the King could not pardon upon convictions, although the appellor might, if he so desired, release the appellee, as was sometimes done upon the payment of a sufficient pecuniary satisfaction. Another consequence of the anomalous condition of these vindictive actions was that the previous acquittal of the appellee in an indictment for murder was no bar to the action, for between the parties the result of the public prosecution was *res inter alios acta*.—*Law Notes*, Nov. 1897.

1. Forfeiture of Dower. We take the following from a review of "The Law's Lumber-Room," by Francis Watt, which appeared in the August number of *Law Notes*, 1897.

Mr. Watt has dragged out some of this old lumber for our inspection, and he blows the dust off it in a very entertaining fashion. All lawyers know that the old law dealt in a serious way with such things as deodands, benefit of clergy, sanctuary, trial by ordeal, wager of battle, the press gang, etc., but our recollection concerning them is apt to be quite hazy, and we can certainly be entertained if not instructed by a writer who talks about them in a way that is learned, and who does not bore us with his knowledge of legal antiquities. Mr. Watt deals with his dead subjects in a lively manner; his touch is light and his wit sparkling. His book contains no more interesting chapter than that which deals with The Custom

wicke had done much to improve and systematize Equity—but proceedings were still carried on in the courts of Common Law much in the same style as in the days of Sir Robert Tresilian and Sir William Gascoigne. Mercantile questions were so ignorantly treated when they came into Westminster Hall, that they were usually settled by private arbitration among the merchants themselves. If an action turning upon a mercantile question was brought in a court of law, the judge submitted it to the jury, who determined it according to their own notions of what was fair, and no general rule was laid down which could afterwards be referred to for the purpose of settling similar disputes.

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The greatest uncertainty prevailed even as to the territories over which the jurisdiction of the Common Law extended. The King of this country, from having

of the Manor. Custom, Lord Coke said, was "the life of the manor." Memorial law was custom, and old local usages were preserved unaltered, but an extraordinary diversity of usage obtained. Many customs were old Saxon, many customs were invented, or at any rate twisted into fantastic rights from mere whim or a not very cleanly sense of humor; but here, as the author reminds us, one must often merely accept the fact, for to try it by the rule of right reason were absurd. Thus in most manors when a copyholder died, his widow had in free bench the whole or part of his lands. There was one restriction. She must remain "sole and chaste." Yet, if she forgot herself, her case was not altogether past praying for in the manor of Enborne in Berkshire. At the next Customary Court she appeared strangely mounted upon a black ram, her face to the tail, the which grasping in her hand, she recited sure the merriest, maddest rhyme it ever entered into the heart of man to conceive—

"Here I am
Riding upon a black ram."

Alas, our author tells us, that the rest must be silence! He is gracious enough, however, to inform the curious that the *Spectator*, greatly daring, gives it in full; but that was as far back as November 1, 1714. We are sure that none of our readers who are fortunate enough to possess the *Spectator* will look up so indelicate a specimen of legal poesy.

"The Law's Lumber-Room" will enable almost any lawyer to pass a pleasant August afternoon.

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no dominions annexed to his crown out of England, except Ireland, the Isle of Man, and the Islands in the English Channel—a remnant of the duchy of Normandy,—had become master of extensive colonies in every quarter of the globe, so that the sun never set upon his empire. Some of these colonies had been settled by voluntary emigration, without any charter from the Crown; some had been granted by the Crown to be ruled under proprietary governments; some had received charters from the Crown constituting legislative assemblies; some had been ceded by foreign states under conditions as to the observance of existing laws; and some were unconditional conquests. Down to Lord Mansfield's time, no general principles had been established respecting the laws to be administered in colonies so variously circumstanced, or respecting the manner in which these laws might be altered.

He saw the noble field that lay before him, and he resolved to reap the rich harvest of glory which it presented to him. Instead of proceeding by legislation, and attempting to *codify* as the French had done very successfully in the *Coustumier de Paris*, and the *Ordonnance de la Marine*, he wisely thought it more according to the genius of our institutions to introduce his improvements gradually by way of judicial decision. As respecting commerce, there were no vicious rules to be overturned,—he had only to consider what was just, expedient, and sanctioned by the experience of nations farther advanced in the science of jurisprudence. His plan seems to have been to avail himself, as often as opportunity admitted, of his ample stores of knowledge, acquired from his study of the Roman civil law, and of the judicial writers produced in modern times by France, Germany, Holland, and Italy,—not only in doing justice to the parties litigating before him, but in settling with precision and upon sound

principles a general rule, afterwards to be quoted and recognized as governing all similar cases. Being still in the prime of life, with a vigorous constitution, he no doubt fondly hoped that he might live to see these decisions, embracing the whole scope of commercial transactions, collected and methodized into a system which might bear his name. When he had ceased to preside in the Court of King's Bench, and had retired to enjoy the retrospect of his labors, he read the following just eulogy bestowed upon them by Mr. Justice Buller, in giving judgment in the important case of *Lickbarrow v. Mason*, respecting the effect of the indorsement of a bill of lading :

"Within these thirty years the commercial law of this country has taken a very different turn from what it did before. Lord Hardwicke himself was proceeding with great caution, not establishing any general principle, but decreeing on all the circumstances put together. Before that period we find that, in courts of law, all the evidence in mercantile cases was thrown together ; they were left generally to a jury ; and they produced no general principle. From that time, we all know, the great study has been to find some certain general principle, which shall be known to all mankind, not only to rule the particular case then under consideration, but to serve as a guide for the future. Most of us have heard these principles stated, reasoned upon, enlarged, and explained, till we have been lost in admiration at the strength and stretch of the understanding. And I should be very sorry to find myself under a necessity of differing from any case upon this subject which has been decided by Lord Mansfield, who may be truly said to be the founder of the commercial law of this country."¹

We shall see that he was equally successful in distinguishing the laws and legislation applicable to the different classes of colonies under the Crown, and that he improved our jurisprudence wherever the improvement of it, by judicial decision, was practicable ; but

1. 2 T. Rep. 63.

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that he failed, with some discredit, when he tried to carry his empire beyond its just limits, and attacked rules by which the descent of landed property in this country had been governed for centuries, and which, if they were expedient, could only be overturned by the power of parliament.

Reserving the political cases tried before Lord Mansfield to be introduced chronologically in the subsequent part of this memoir, I wish now to lay before my readers some specimens of his judgments in determining private rights. But here I am embarrassed by the riches which surround me. I have often had to lament that hardly a fragment remains to enable us to appreciate the learning and genius of judges celebrated by their contemporaries. Lord Mansfield is handed down to us by Burrow,¹ Cowper,² Durnford, and East,³ the very best law reporters that have ever

1. This gentleman, when made an Irish peer by the title of Lord Glenbervie, ascribed his rise to the reputation he had acquired by reporting Lord Mansfield's decisions; and took for his motto, "Per varios casus." This is rather better than that adopted by a learned acquaintance of mine on setting up his carriage, "*Causes produce Effects*,"—which is pretty much in the style of "*Quid rides*," for the tobacconist; or "*Quack, Quack*," for the doctor whose crest was a duck.

Sylvester Douglas, Lord Glenbervie, a Scottish lawyer, born at Ellou in 1743, lived in England. He attained eminence in his profession, and published "Reports in King's Bench," which are high authority. He was appointed secretary for Ireland in 1793, was made Lord Glenbervie in 1800, and held several high civil offices. His wife was a daughter of the celebrated Lord North. He was repeatedly elected to Parliament. Died in 1823.—*Thomas' Biog. Dict.*

2. Henry Cowper (1758–1840), lawyer. He was called to the bar at the Middle Temple May 26, 1775. For many years he was clerk assistant of the parliament and clerk of the House of Peers. He published in three volumes in 1783 "Reports of Cases in the Court of King's Bench from Hilary term 14 George III. to 18 George III.," and a second edition appeared in 1800.—*Stephen's Nat. Biog.*

3. Sir Edward Hyde East (1764–1847) Chief Justice of Calcutta. He became a student of the Inner Temple, and was called to the bar in November, 1786. In 1813 he was chosen to succeed Sir Henry Russell as Chief Justice of the Supreme Court at Fort William, Bengal. Before leaving England he was knighted by the prince

appeared in England; and I am bewildered when I try to make a selection from their voluminous works. CHAP.
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I naturally begin with the law of INSURANCE,—almost his own creation; and I might copy the whole of a copious treatise on the subject by Mr. Justice Park, which is composed almost entirely of his decisions and *dicta*. But the bulk of my readers, being neither assurers nor assured,—nor caring very much about policies valued or open,—nor about payment or return of premium,—nor about losses total or partial,—nor about perils of the seas, capture, or barratry,—nor about warranties, convoys, deviation, or abandonment,—will be contented with a taste of Lord Mansfield's reasoning upon the duty of the party effecting a policy of insurance to disclose the dangers to which the subject-matter insured may be exposed.—The governor of Fort Marlborough, in the island of Sumatra, had insured the place against capture for a year,—and it was

regent. Besides performing his judicial duties he interested himself in the cause of native education, and was the chief promoter of the Hindoo College. When he retired from office in 1822, the natives presented him with an address and subscribed for a statue of him. This, executed by Chantrey, was afterwards placed in the grand-jury room of the supreme court. East is chiefly known as a legal writer from his "Reports of Cases in the Court of King's Bench from Mich. Term, 26 Geo. III. (1785), to Trin. Term, 40 Geo. III. (1800)"; 8vo, 5 vols., 1817, by C. Durnford and E. H. East. These were the first law reports published regularly at the end of each term. "No English reports," says Marvin, "are oftener cited in American courts than these."—*Stephen's Nat. Biog.*

None of the modern Reports exceed these for the care and accuracy of finish, including great propriety of style, which they everywhere maintain. They are equally distinguished by the terseness and comprehensive accuracy with which the point adjudged is given in the reporters' syllabus, and by the care with which the references to cases cited have been verified before the work went through the press.

They are entitled "Term Reports," and were published in parts at the close of each Term, and are cited as "Term Reports" or "T. R." It has been said that they are called *par excellence* the "Term Reports," but the above is the true reason why they are so called.—*Wallace's Reporters.*

CHAP. taken by Count D'Estaigne¹ within the year, after a
XXXIV. very gallant defence. The underwriters refused to pay, on the ground that there had not been any disclosure to them of the weakness of the fort, or the probability of its being attacked by the French :

Lord Mansfield : " Insurance is a contract upon speculation. The special facts upon which the risk is to be computed lie most commonly in the knowledge of the assured only. The underwriters trust to his statement, and proceed upon confidence that he does not keep back any circumstance which they have not the means of knowing. The keeping back such a circumstance is considered a fraud, and avoids the policy, although the suppression happen by mistake ; because the risk is really different from that which they intended to take upon themselves. The policy would equally be void against the underwriters if they concealed anything exclusively within their knowledge—as, if they had learned by private information that the ship to be insured had arrived safely at her port of destination,—and they might be compelled to refund the premium which they had fraudulently received. This governing principle is applicable to all contracts. Good faith forbids either party, by concealment of what he alone knows, to draw the other into a bargain which he would certainly avoid if their information were equal. But either party may innocently be silent as to matters upon which both may equally exercise their judgment. *Aliud est celare, aliud tacere : neque enim id est celare quicquid reticeas ; sed cum quod tu scias, id ignorare, emolumenti tui causâ, velis eos quorum intersit id scire.*² This definition of concealment, restrained to the effi-

1. Charles Hector, Count D'Estaigne, a French commander, who served under Count Lally in India, where he was made prisoner by the English, but was released on his parole, which, however, he broke. In the American war he was employed as vice-admiral and general of the French armies, and took the island of Grenada. In 1787 he became member of the Assembly of Notables, and commandant of the national guards at Versailles at the commencement of the Revolution. B. in Auvergne, 1729; guillotined at Paris, 1794.—*Beeton's Dict. of Biog.*

2. " It is one thing to conceal, another to be silent on a subject ; for it is not practising concealment if you should be silent about anything ; but (it is concealment) when for the sake of your own emolu-

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cient motives and precise subject of any contract, will generally hold to make it void in favor of the party misled by his ignorance of the thing concealed. There are many matters as to which the assured may be innocently silent. He need not mention what the underwriters know, or ought to know, or may be supposed to form conjectures upon for themselves ; as, the difficulties of the voyage, the variation of the seasons, or the probability of lightning, hurricanes, and earthquakes. So the underwriters are bound to know every cause which may occasion political perils,—from the rupture of treaties and from the various operations of war, as well as the probability of safety from the continuance or return of peace, or from the imbecility of the enemy through the weakness of their councils or their want of physical resources. Men argue differently from natural phenomena and political appearances ; they have different degrees of knowledge and different capacities. But the means of information and forming a correct opinion are open to both ; so far each professes to act from his own skill and sagacity, and, therefore, neither need communicate to the other. The reason of the rule which requires disclosure is to prevent frauds, and to encourage good faith ; it is confined to such facts as vary the nature of the contract, which one privately knows, and the other is ignorant of and has no reason to suspect. The question, therefore, must always be whether there was, under all the circumstances, at the time the policy was underwritten, a fair statement, or a concealment, either fraudulent or undesigned, varying materially the risk understood to be run.”¹

He then went on to apply these principles, so lucidly explained, to the facts of the case ; and the verdict for the plaintiff was confirmed.²

ment, you wish those, whose interest it is to know that which you know, to remain in ignorance.”—*Cic. de Officiis*. Bk. III., chap. 12-13.

1. Qu. how far an objection might not have been made to the validity of this insurance, on the ground that a governor ought not to be allowed to lessen his motives to do his duty in defending, to the last extremity, the place which he commands.

2. *Carter v. Boehm*, 3 Burr. 1905 ; Sir W. Bl. 591.—Lord Mansfield infinitely improved the procedure in actions on marine policies, by introducing what is called the “*Consolidation Rule*,” by which he obviated much vexation, delay, and expense, and brought the real question between the underwriters and the assured to a speedy deci-

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Bills of
exchange.

Likewise with regard to bills of exchange and promissory notes, Lord Mansfield first promulgated many rules that now appear to us to be as certain as those which guide the planets in their orbits. For example, it was till then uncertain whether the second indorsee of a bill of exchange could sue his immediate indorser without having previously demanded payment from the drawer; and it was said three Chief Justices had ruled the point one way at *Nisi Prius*, and as many Chief Justices had ruled it the other way:

Lord Mansfield: "I cannot persuade myself that there has really been such a variety of opinions upon this question. But, however that may be, it must now be determined by the nature of the transaction, general convenience, and mercantile usage. A bill of exchange is an order on the drawee, who has, or is supposed to have, effects of the drawer in his hands to pay to the holder. When the drawee has accepted, he is the principal debtor, and due diligence against him must be used before the other parties, who are his sureties, can be held liable. Therefore, if the acceptor is not called upon when the bill is due, the drawer and indorsers are discharged. When the bill of exchange is indorsed by the person to whom it is made payable, as between indorser and indorsee, it is a new bill of exchange, and the indorser stands in the place of the drawer. The indorsee does not trust to the credit of the original drawer; he does not know whether such a person exists, or where he lives, or whether his name may have been forged. The indorser is

sion on its real merits. The mysteries of this rule may not be disclosed to the profane.—He likewise did much for the improvement of commercial law in this country by rearing a body of special jurymen at Guildhall, who were generally returned on all commercial causes to be tried there. He was on terms of the most familiar intercourse with them; not only conversing freely with them in court, but inviting them to dine with him. From them he learned the usages of trade, and in return he took great pains in explaining to them the principles of jurisprudence by which they were to be guided. Several of these gentlemen survived when I began to attend Guildhall as a student, and were designated and honored as "Lord Mansfield's jurymen." One, in particular, I remember, Mr. Edward Vaux, who always wore a cocked hat, and had almost as much authority as the Lord Chief Justice himself.

his drawer, and the person to whom he originally trusted in case the drawee should not pay the money. We are, therefore, all of opinion that, to entitle the indorsee to bring an action against the indorser, upon failure of payment by the drawee, it is not necessary to make any demand on, or inquiry after, the first drawer."

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He goes on to explain (which seems then to have been necessary), for the information of his brother judges, as well as of "the students," that the maker of a promissory note is in the same situation as the acceptor of a bill of exchange, and that in suing the indorser of the note it is necessary to allege and to prove a demand on the maker, fearing it might be supposed that the maker of a promissory note is not the principal debtor, and that, without any recourse against him, the indorser may at once be compelled to pay.¹

There is another contract of infinite importance to a maritime people, the incidents of which had received little illustration in England since the compilation of the "Laws of Oléron,"² in the reign of Richard I.—I

Right to
freight.

1. *Heylyn v. Adamson*, 2 Burr. 669. Lord Mansfield had likewise to determine that the indorser of a bill of exchange is discharged if he receives no notice of there having been a refusal to accept by the drawee (*Blesard v. Herst*, 6 Burr. 2670); and that *reasonable time* for giving notice of the dishonor of a bill or note is to be determined by the Court as matter of law, and is not to be left to the jury as matter of fact, they being governed by the circumstances of each particular case. (*Tindal v. Brown*, 1 Term Rep. 167.) It seems strange to us how the world could go on when such questions, of hourly occurrence, were unsettled.

2. Oléron is an island lying off the west coast of France, opposite the mouths of the Charente and Sendre. The sea laws of Oléron embody the usages of the mariners of the Atlantic. Cleirac, a learned advocate in the Parliament of Bordeaux, in the introduction to his work on *Les Us et Coutumes de la Mer*, first printed at Bordeaux in 1647, states that Eleanor, Duchess of Guienne (the consort of Louis VII. of France, but subsequently divorced from him and married to Henry II. of England), having observed during her visit to the Holy Land, in company with Louis, that the collection of customs of the sea contained in *The Book of the Consulate of the Sea* was held in high repute in the Levant, directed on her return that a record should be made of the judgments of the maritime court of the island

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mean that between shipowners and merchants for the hiring of ships and carriage of goods. I shall notice only one of very many cases decided on this subject by Lord Mansfield. Till his time, the rights and liabilities of these parties had remained undecided upon the contingency, not unlikely to arise, of the ship being wrecked during the voyage, and the goods being saved and delivered to the consignee at an intermediate port. Lord Mansfield settled that freight is due *pro rata itineris*—in proportion to the part of the voyage performed—showing that this is the rule which prevails among foreign nations, and observing, “Non erit alia lex Romæ, alia Athenis; alia nunc, alia posthac; sed, et apud omnes gentes et omni tempore, una eademque lex obtinebit.”¹

Employ-
ment
of *puffers*
at an auc-
tion.

Lord Mansfield's familiarity with the general principles of ethics, which he had acquired by an attentive study of the philosophical works of Cicero, availed him on all occasions when he had to determine on the proper construction and just fulfilment of contracts. The question having arisen, for the first time, whether the seller of goods by auction, with the declared condition that they shall be sold to “the highest bidder,” may employ a “puffer,”—an agent to raise the price by bidding,—he thus expressed himself:

“The matter in dispute is of small pecuniary value, but it involves principles of the highest importance to society. The basis of all dealings ought to be good faith; so more especially in these transactions, where the public are brought together upon a confidence that the articles set up to sale will be dis-

of Oléron (at that time a peculiar court of the duchy of Guienne), in order that they might serve as law amongst the mariners of the Western Sea. He states further that Richard I. of England, on his return from the Holy Land, brought back with him a roll of those judgments, which he published in England and ordained to be observed as law.—*Encyc. Britannica*, *Art. Sea Laws*, vol. xxi. p. 583.

1. *Luke v. Lyde*, 2 Burr. 883. “There will not be one law for Rome, another for Athens; one now, another later; but, both among all nations and for all time, one and the same law will prevail.”

posed of to the highest real bidder. That can never be the case if the owner may secretly enhance the price by a person employed for that purpose. Yet tricks and practices of this kind daily increase, and grow so frequent that good men give in to the ways of the bad, and become dishonest in their own defence. But the right now claimed was never before openly avowed. An owner of goods set up for sale at an auction would not bid in the room for himself. Speedily after such a bid the owner and the auctioneer would be the only persons present ; and if it were discovered that there were puffers bidding, there would be the same dispersion. The practice is a fraud upon the sale, and upon the public. I cannot listen to the argument that it is a common practice.¹ Gaming, stock-jobbing, and swindling are all very common ; but the law forbids them all. The very nature of a sale by auction is that the goods shall go to the highest real bidder ; the owner violates his contract with the public if, by himself or his agent, he bids upon his goods, and no subsequent bidder is bound to take the goods at the price at which they are knocked down to him."²

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Lord Mansfield gave earnest of his power to deal with questions of colonial law in deciding that certain English statutes passed in the reigns of Richard II. and Edward VI. do not extend to Jamaica, which had been conquered from Spain by Cromwell, and, having been abandoned by the Spanish inhabitants, had been resettled by English emigrants:

His colonial law.

"If Jamaica is considered as a conquest," said he, "it would retain its ancient laws till the conqueror thought fit to alter them. If it be considered as a colony which we have planted (as it ought to be, the old inhabitants having left the island), then these statutes are positive regulations of police

1. It is very gravely urged, as their chief argument, by those who are for permitting marriages between widowers and the sisters of their deceased wives, that such marriages are common ; although they might reason in the same manner for the legalizing of bigamy.

2. *Bexwell v. Christie*, Cowp. 395. This rule was ratified by Lord Kenyon in *Howard v. Castle*, 6 T. R. 642, and has ever since been acted upon. But, by the conditions of sale, the owner may expressly reserve the power of making a bid by his agent.

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not adapted to the circumstances of a new colony, and therefore no part of that law of England which colonists are supposed from necessity to carry with them to their new abode. No act of parliament made after a colony is planted is construed to extend to it without express words to that effect."¹

Campbell
v. Hall.

But it was in the great case of *Campbell v. Hall*² that he fully developed the law upon this subject, and explicitly laid down the rules upon which our colonies have been governed ever since.

The island of Grenada having been taken by us in the Seven Years' War,³ and ceded to us by the Peace of 1762, the King, in a proclamation issued in 1763, of his own authority, imposed a tax of 4 per cent. on all exports; and the action was brought in the Court of King's Bench in England by the plaintiff, a British subject, who had subsequently purchased an estate and settled in the island, to recover back the sum he had been compelled to pay under this imposition for liberty to ship his sugars to be carried to London; he maintaining that such a tax could only be imposed by the authority of parliament. Lord Mansfield thereupon laid down the six following propositions:

"1. A country conquered by the British arms becomes a dominion of the King in right of his crown; and therefore necessarily subject to the legislature—the Parliament of Great Britain. 2. The conquered inhabitants, once received under the King's protection, become subjects, and are universally to be considered in that light; not as enemies of aliens. 3. The articles of capitulation upon which the country surrendered, and the articles of peace by which it is ceded, are sacred and inviolable according to their true intent and meaning. 4. The law of every dominion annexed to the crown

1. *Rex v. Vaughan*, 4 Burr. 2494.

2. Cowp. 204.

3. The Seven Years' War (1756–1763) was caused by the alarm entertained by the Continental powers of Europe at the aggressive designs of Frederick the Great, and by the desire of Maria Theresa to recover the province of Silesia from the King of Prussia.

equally affects all persons and all property within the limits thereof, and is the rule of decision for all questions which arise therein. Whoever purchases, lives, or sues there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man, or the plantations, has no privilege distinct from the natives. 5. The laws of a conquered country continue in force until they are altered by the conqueror. The absurd exception as to Pagans mentioned in *Calvin's case*¹ shows the universality and antiquity of the maxim; in all probability it arose from the mad enthusiasm of the Crusades. 6. The last proposition is, that if the King (and when I say the King, I always mean the King without the consent of parliament) has a power to alter the old and to introduce new laws in a conquered country, this legislation being subordinate, that is, subordinate to his own authority in parliament, he cannot make any change contrary to fundamental principles; he cannot exempt an individual in that dominion from the power of parliament, or give him privileges exclusive of his other subjects." The learned judge gives a clear opinion in favor of the legality of the proclamation:—"It is left by the constitution to the King's authority to accept or refuse a capitulation; if he refuses, and puts the inhabitants to the sword or exterminates them, all the lands belong to him; if he receives the inhabitants under his protection, and grants them their property, he has a power to fix such terms and conditions as he thinks proper. He is intrusted with making the terms of peace; he may yield up the conquest, or retain it upon what terms he pleases. These powers no man ever disputed; neither has it been hitherto controverted that the King may change part or the whole of the law or political form of government of a conquered dominion."—He then draws an illustration from "the history of the conquests made by the Crown of England," reasoning in a manner which was highly distasteful to the "sister kingdom," and which no English judge would have ventured upon after the year 1782: "The conquest and the alteration of the laws of Ireland have been variously and learnedly discussed by lawyers and writers of great fame at different periods of time; but no man ever said the crown could not do it. The fact, in truth, after all the

CHAP. XXXIV. researches which have been made, comes out clearly to be as it is laid down by Lord Chief Justice Vaughan,¹ that 'Ireland received the laws of England by the charters and commands of Henry II., King John, Henry III.' (he adds an) '&c.' to take in Edward I. and the subsequent kings; and he shows clearly the mistake of imagining that the charters of the 12th of John were by the assent of a Parliament of Ireland. Whenever the first parliament was called in Ireland, that change was introduced without the interposition of the Parliament of England, and must therefore be derived from the crown." He proceeds with Wales, Berwick, Gascony, Calais, Gibraltar, Minorca, and New York, placing them all on the same footing, and showing the power of the King over them to be absolute till he had renounced it or modified it:—"It is not to be wondered at," he observed, "that an adjudged case in point has not been produced. No question was ever started before but that the King has a right to legislative authority over a conquered country; it was never denied in Westminster Hall; it never was questioned in parliament. Coke's report of the arguments and resolutions of the judges in *Calvin's case* lays it down as clear: 'If a king comes to a kingdom by conquest, he may change and alter the laws of that kingdom; but if he comes to it by title and descent, he cannot, without the consent of parliament.' It is plain that he alludes to his own country, because he speaks of a country in which there is a parliament. In the year 1722, the Assembly of Jamaica being refractory, it was referred to Sir Philip Yorke and Sir Clement Wearge (great names) to know 'what could be done, if the assembly should obstinately continue to withhold the usual supplies?' They reported thus: 'If Jamaica is still to be considered as a conquered island, the King has a right to lay taxes upon the inhabitants; but if it is to be considered in the same light as the other plantations, no tax can be imposed on the inhabitants but by an assembly of the island, or by an act of parliament.' On the other side no book, no saying, no surmise has been cited, and in our annals a doubt upon the subject has never been entertained."

However, having so set up the prerogative of the Crown, he went on to show that in this instance it had

1. Vaughan's Rep. 292.

been waived by a prior proclamation for the settling of the government of Grenada and other conquests, directing the governors to convene general assemblies with power to make laws for the government of those colonies, agreeable, as near as might be, to the laws of England, and by a commission actually issued appointing a governor of Grenada, and authorizing him to summon an assembly to make laws as soon as the state and circumstances of the island would permit. Such grants being irrevocable, although not acted upon, Grenada was pronounced to be in the same situation as Jamaica, so that the royal proclamation imposing the tax was void, and judgment was given for the plaintiff.

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A very interesting question, turning on general principles of jurisprudence, arose before Lord Mansfield, whether an action could be maintained in our courts by an alien enemy upon a ransom bill, or security for a certain proportion of the value of a ship and cargo taken by a privateer and released. As usual, in such cases, he took the liberal side, saying,—

Legality of
ransom
bills.

“Ransom bills are to be encouraged as lessening the horrors of war. Justice ought to be administered to foreigners in our courts in the most extensive and generous manner; because the Crown cannot here interpose as in absolute monarchies to compel the subject to do justice in an extra-judicial manner.”¹

Judgment was given for the plaintiff; and the same doctrine was laid down even in a case where the capturing ship with the ransom bill on board had been captured by an English cruiser,—Lord Mansfield saying, “It is sound policy as well as good morality to keep faith with an enemy in time of war: although the contract arose out of a state of hostility, it is to be governed by the law of nations and the eternal rules of

1. *Cornu v. Blackburn*, Doug. 640.

CHAP. justice."¹ But ransom bills are now forbidden by act
XXXIV. of parliament.²

Remedy
against the
governor
of a foreign
possession.

Fabrigas
v. Mostyn.

Although the respective powers and privileges of those possessing, and being subject to, the authority of government at home had been well defined, at least since the Revolution of 1688, great doubts still existed with respect to cases of this sort arising in the dominions of the Crown beyond the seas. Lord Mansfield was of essential service in establishing the grand maxim that a British subject is under the protection of the constitution wherever the British flag is unfurled all over the globe. While Minorca was in our possession, General Mostyn, the governor, in a very arbitrary manner, arrested Signor Fabrigas, a native of the island, and without any just cause confined him in a dungeon. The injured man followed the oppressor to England, after the expiration of his government, and brought an action of trespass and false imprisonment against him in the Court of Common Pleas. The jury found a verdict for the plaintiff, with 3000*l.* damages; but a bill of exceptions was tendered to the direction of the presiding judge, who held that the action was maintainable,—and this came, by writ of error, before the Court of King's Bench. The case, on account of its extraordinary importance, was argued several times, two grand points being made for the defendant: 1. That the plaintiff could not sue in an English court of justice, having been born before the Peace of Utrecht, out of the allegiance of the English crown, when Minorca with the other Balearic Islands belonged to Spain; and 2. That no action could be maintained against the defendant in a British court of justice for any of his acts in Minorca, as, although he might be impeached in parliament, there was no remedy against

1. *Anthon v. Fisher*, Doug. 649, n.

2. Stat. 22. Geo. III. c. 25.

him in a court of law for anything he had done in his capacity of governor.¹ CHAP.
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Lord Mansfield: "It is impossible there ever should exist a doubt but that a subject born in Minorca has as good a right to appeal to the King's courts of justice at Westminster as one who was born within the sound of Bow-bell ;² and the objection made in this case, of its not being stated on the record that the plaintiff was born since the Peace of Utrecht, by which Minorca was ceded to this country, is untenable, for from the moment of the cession all the inhabitants of the island were under the allegiance, and were entitled to the protection, of the British Crown. But, then, we are told of the *sacredness* of the defendant's person as *governor* ; and it is insisted by

1. Buller, then at the bar, concluded a very able argument for the plaintiff by observing that if the verdict against Governor Mostyn should be set aside, it would be said of him—

"Hic est damnatus inani judicio ;"

and of the Minorquins,

"At tu, victrix provincia, ploras."

"This man has been sentenced by a worthless trial ;"

"But thou, victorious province, dost lament."

2. The steeple of Bow Church, 235 feet in height, is one of Wren's best and most original works. Bow bells have always been famous, and people born within sound of Bow bells are called Cockneys. Pope says—

"Far as loud Bow's stupendous bells resound."

Stow tells how in 1469 it was ordained by a Common Council that the Bow Bell should be nightly rung at nine of the clock. This bell (which marked the time for closing the shops) being usually rung somewhat late, as seemed to the young men, prentices, and others in Cheap, they made and set up a rhyme against the clock as followeth :

"Clerke of the Bow Bell, with the yellow lockes,
For thy late ringing thy head shall have knockes."

Whereunto the Clerk replying wrote :

"Children of Cheape, hold you all still,
For you shall have the Bow Bell rung at your will."

What child will not remember that it was the Bow Bells which said to the poor runaway boy as he was resting on Highgate milestone—

"Turn again, Whittington,
Lord Mayor of London,"

and that he obeyed them, and became the most famous of Lord Mayors?—*Hare's Walks in London*, vol. i. p. 233.

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way of distinction, that supposing the action will lie for an injury of this kind committed by one individual against another in such a dominion beyond the seas, yet it shall *not emphatically* lie against the governor. In answer to which I say, that, for many reasons, if it did not lie against any other man, it shall *most emphatically* lie against the governor. For it is truly said, that a governor is in the nature of a viceroy ; and therefore locally, during his government, no civil or criminal action will lie against him, because, upon process, he would be liable to imprisonment. Emphatically, the governor must be tried in England, to see whether he has lawfully executed the authority delegated to him, or whether he has abused it in violation of the laws of England and the trust reposed in him. The defendant, by being tried here, is not deprived of any means of proving his innocence. He might show that he only did what the public safety required, or that he acted as the Spanish governor might have done. The way of knowing foreign laws is by admitting them to be *proved as facts*, and the judge must assist the jury in finding what they really ordain. If the governor of a foreign possession is accountable in this country, he is accountable in this court. Complaints made to the King and Council tend to remove the governor ; but, when he has ceased to be governor, they have no jurisdiction to make reparation by giving damages, or to punish him in any shape for any wrong which he may have committed. The monstrous proposition that a governor acting by virtue of letters patent under the great seal is accountable only to God and his own conscience, that he is absolutely despotic, and can despoil those under his rule both of their liberty and property with impunity, is abhorrent to the principles of natural justice, and is contrary to the law of England, which says to all the King's subjects 'whensoever or wheresoever you are wronged, you shall have a remedy.' "—Judgment affirmed.¹

Lord
Mansfield's
respect for
the juris-
diction of
other
courts.

But Lord Mansfield said, "The true maxim is, '*Boni judicis ampliare justitiam*,' not '*ampliare jurisdictionem*.' " ² He therefore carefully considered to what various tribunals the constitution assigned the deter-

1. Cowp. 161.

2. It is the duty of a good judge to increase justice, not to extend jurisdiction.

mination of various forensic questions ; and, not being misled by love of popularity or love of power while deluding himself with the notion that he only wished to vindicate the rights of all suitors who came before him, he did not endeavor to encroach upon the jurisdiction either of the two Houses of Parliament or of the inferior courts. A tempting occasion arose of securing to himself the acclamations of the mob as "a truly British judge" when several actions came for trial before him, brought by sailors on board a merchant ship which had been captured by a *letter of marque* as prize, but liberated by the Court of Admiralty, the plaintiffs contending that the captain of the *letter of marque* was liable to be sued by them in a court of law for the false imprisonment which they had undergone. But he clearly held that the actions could not be maintained, as the question of "prize, or no prize," was properly triable only before the Court of Admiralty, and it belonged to that court alone, upon the unjust capture of a ship as prize, to award damages and costs against the captor to all who have suffered by his wrongful act.

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"This," said he, "is a new attempt, which, if it succeeded, would destroy the British navy. If an action at law should lie by the owners and every man on board a ship taken as prize against the captor and every man on board his ship, the sea would be safe for the trade of our enemies, however great our naval superiority. I am bound to suppose that the Court of Admiralty has done ample justice, according to the power it possessed and the duty imposed upon it, between all these parties."¹

So, when a mandamus was applied for to compel the bencher's of Gray's Inn to call a person to the bar, instead of wishing to convert this writ into an instrument by which the whole scope of the executive gov-

1. 2 Evans, 149; *Lindo v. Rodney*, Doug. 613.

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ernment might be brought within the cognizance of the judges of the King's Bench, and they might issue orders to the King himself and all in authority under him, he very properly refused to interfere, saying, "The power of admitting persons to practise as barristers is vested in the benchers of the Inns of Court, subject to visitorial power; and if the applicant is wronged, he must apply elsewhere for a remedy."¹

I ought to mention, however, that, misled by an old precedent, he fell into a mistake in holding that an action-at-law could be maintained to recover a legacy.²

PRECEDENT and PRINCIPLE often had a hard struggle which should lay hold of Lord Mansfield; and he used to say that he ought to be drawn placed between them, like Garrick between TRAGEDY and COMEDY. Though he might err, like all other mortals, where there was no fixed rule of law which could not be shaken without danger, he was guided by a manly sense of what was proper, and he showed that he considered "law a rational science, founded upon the basis of moral rectitude, but modified by habit and authority." Thus, a notion had long prevailed that if a ship was cast away, and no man or animal came ashore alive, the wreck belonged to the King or his grantee, because the statute 3 Edward I. c. 4, enacts that "it shall *not* be a wreck if man, dog, or cat escape alive." A lord of a manor having brought an action for property wrecked when all on board had perished, dogs and cats included, but the

Right to
wreck.

1. *Rex v. Benchers of Gray's Inn*, Doug. 353.—I hope that the system which has prevailed satisfactorily may long continue; but if ever the Inns of Court should make arbitrary rules for the government of their members, and should enter into a contest for students, by abridging the period of study and relaxing the regulations for the exclusion of improper candidates, it will be necessary for the legislature to interpose, and to establish a uniform and efficient discipline by way of preparation for a profession of such importance to the community.

2. *Atkins v. Hill*, Cowp. 284; *Hawkes v. Saunders*, Cowp. 289; *Deeks v. Strutt*, 5 Term. Rep. 690.

property was clearly identified by the original owners, CHAP. XXXIV.
he said, —

“The doctrine contended for is contrary to the principles of law, justice, and humanity. The very idea of it is shocking. The coming to shore of a dog or cat alive can be no better proof than if they should come ashore dead. The escaping alive makes no sort of difference. If the owner of the dog, or cat, or other animal, was known, the presumption of the goods belonging to the same person would be equally strong whether the animal breathed or not. It was only when no owner could be found that, by common law, the goods belonged to the King; and the statute is only declaratory of the common law. It does not enact that, if neither man, cat, nor dog escape alive, the wreck shall belong to the King. The owner was only required to show that the property was his *per certa indicia et signa*,¹ and animals were mentioned by way of instance. Anciently, goods sent by sea probably were not distinguished by marks and numbers so accurately as at the present day, and then a dog or a cat might afford a presumption towards ascertaining the owner of the goods. The goods in question are proved to have been the property of the defendant; and, after this attempt to seize them, the plaintiff may betake himself to the trade of a wrecker on the Cornish coast.—*Judgment for the defendant.*²

Lord Mansfield first established the grand doctrine that the air of England is too pure to be breathed by a slave. James Somersett, a negro, being in a state of slavery in Africa, was carried from thence to Jamaica, where, by law, slavery was permitted, and there sold as a slave. Mr. Steuart, his master, brought him over to England, intending soon to return with him to Jamaica. While confined on board a ship in the river Thames, that he might be carried back, he claimed his freedom, and, being brought up under a writ of *habeas corpus*, the court had to determine whether he was entitled to it.

Somersett's Case: a slave becomes free in England.

1. "By certain evidences and proofs."
2. *Hamilton v. Davis*, 5 Burr. 2732.

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On behalf of his master it was argued, that villeinage, or slavery, had been permitted in England by the common law ; that no statute had ever passed to abolish this *status*; that although *de facto* villeinage by birth had ceased, a man might still make himself a villein by acknowledgment in a court of record ; that at any rate the rights of these parties were to be decided according to the law of Jamaica, where they were domiciled ; and as there could not be the smallest doubt that the voyage to England did not amount to emancipation, so that if Somersett were again in Jamaica he would still be considered the property of his master, the relation between them could not be considered suspended in England. Various instances were stated in which negro slaves, brought over here from the West Indies, had been carried back again against their will by their masters ; and *dicta* of Lord Talbot and Lord Hardwicke were cited, to the effect that this might lawfully be done.

Lord Mansfield : " I am quite clear that the act of detaining a man as a slave can only be justified by the law of the country where the act is done, although contracts are to be construed according to the law of the country where they are entered into, and the succession to personal property according to the law of the country where the deceased owner was domiciled at the time of his death. Then what ground is there for saying that the *status* of slavery is now recognized by the law of England ? that trover will lie for a slave ? that a slave-market may be established in Smithfield ? I care not for the supposed dicta of judges, however eminent, if they be contrary to all principle. The dicta cited were probably misunderstood ; and, at all events, they are to be disregarded. Villeinage, when it did exist in this country, differed in many particulars from West India slavery. The lord never could have thrown his villein, whether *regardant* or in *gross*, into chains, sent him to the West Indies, and sold him there to work in a mine or in a cane-field. At any rate, villeinage has ceased in England, and it cannot be revived. The air of Eng-

land has long been too pure for a slave, and every man is free who breathes it. Every man who comes into England is entitled to the protection of English law, whatever oppression he may heretofore have suffered, and whatever may be the color of his skin :

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' *Quamvis ille niger, quamvis tu candidus esses.* ' ¹

Let the negro be discharged." ²

But Lord Mansfield gives a clear opinion in favor of the legality of pressing mariners for the royal navy, saying that " the practice was not only essential for the safety of the state, but had existed from the remotest antiquity, was supported by judicial decisions, and was even incidentally recognized by acts of parliament." He observed, that " a pressed sailor is not a slave ; no compulsion can be put upon him except to serve his country, and, while doing so, he is entitled to claim all the rights of an Englishman." ³

Legality of
pressing
seamen.

Happily the law is at last settled by the legislature upon the footing for which I had long contended, that " no action can be maintained on a wager " ; but it is still curious to see how such a judge as Lord Mansfield disposed of cases of this sort, when the general rule, subject to exceptions, was, that a wager might be enforced like any other contract. A party, bringing by appeal to the House of Lords a decree in Chancery which had been pronounced against him, laid a wager that the decree would be affirmed. The decree being reversed, he refused to pay the wager ; and an action being brought against him, he argued—1. It is essential to the validity of a wager that the event be contingent, but the law of the country must be taken to be clear, evident, and certain, insomuch that the reversal of this decree was as little doubtful as that a stone will fall to the earth by the force of gravitation. 2. At all events

Wagers.

1. " However black he is, however white you may be."
2. See 20 St. Tr. 1-82.

3. *Rex v. Tubbs*, Cowp. 512.

CHAP. XXXIV. a wager respecting a judicial proceeding is illegal and void, as contrary to public policy.

On the result of an appeal to the House of Lords.

Lord Mansfield: "This contract is equal between the parties; they have each of them equal knowledge and equal ignorance; and it is concerning an event which—reasoning by the rules of predestination—is, to be sure, so far certain, as it must be as it should afterwards happen to be. Touching the certainty of the law, it would be very hard upon the profession if it were so certain that everybody knows it: the misfortune is that it is so uncertain, that much money must be paid before we can find it out, even in the court of last resort. Then I cannot say that this wager is against sound public policy. A person who wanted to be made a bishop, conversing with the Prime Minister respecting a see then vacant, said, 'I will bet you so much (naming a good round sum) that I have not the bishopric.' This was a mere disguise to purchase it, and the contract manifestly corrupt and void. So, if the present wager had been made with one of the judges or one of the peers who were to give an opinion on the validity of the decree, it would have been construed as a bribe. But this transaction, as far as I can see, contains nothing immoral, or contrary to justice, and I do not think that we can prevent the plaintiff from recovering the money he has won."—*Judgment for the plaintiff*.¹

Two heirs "running their fathers."

Mr. Codrington and Mr. Pigott, two licentious young men,—celebrated characters on the turf,—being heirs to great estates, agreed to wager a large sum upon the survivorship of their respective fathers, or, as it was termed, "to run their fathers." The former, however, feeling some little remorse, Lord March, afterwards Duke of Queensberry,² agreed to stand in his place, and mutual notes were given for the payment

1. *Jones v. Randall*, Cowp. 37.

2. William Douglas, fourth Duke of Queensberry, and Earl of March, a Scottish peer, born about 1724, was notorious for his vices. He became Duke of Queensberry about 1778, and inherited a large fortune. Died, without issue, in 1810.—*Thomas' Biog. Dict.*

Whom I remember when he was called "old Q.," sitting in his balcony in Piccadilly, looking through an opera-glass at the ladies as they passed by.

of the sum staked. It turned out that Mr. Pigott's father was at that time actually dead, of which neither party had any knowledge or suspicion. Lord March now brought an action on the wager, which the counsel for the defendant insisted was illegal and void.

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Lord Mansfield: "The question is, what the parties really meant. The material contingency was, Which of the two young heirs should come to his father's estate first? It was not known that the father of either of them was then dead. All circumstances show that, if this possibility had been thought of, it would not have made any difference in the bet, and there is no reason to presume that they would have excepted it. The intention was, that he who came first to his estate should pay the sum of money to the other, who stood in need of it. That the event had happened was in the contemplation of neither party. The contract was fair; and, by the just interpretation of it, the plaintiff is entitled to recover."¹

But he held that a wager between two voters, respecting the event of an election for members of parliament, was illegal:

Lord Mansfield: "Whether this particular wager had any other motive than the spirit of gaming and the zeal of both parties, I do not know; but our determination must turn on the species and nature of the contract; and if that is, in the eye of the law, corrupt, and against the fundamental principles of the constitution, it cannot be supported by a court of justice. The law declares that the elector of members of parliament shall be free from pecuniary influence in giving his vote. This is a wager, in the form of it, between two voters, and the event is the success of one of the rival candidates. The success of either candidate is material; and, from the moment the wager is laid, both parties are fettered. It is, therefore, laying them under a pecuniary influence. What is so easy as, in a case where a bribe is intended, to lay a wager? It is difficult to prove that the wager makes the elector give a contrary vote to what he would otherwise have given, but it has a tendency to influence his mind. Therefore, in the case respecting a

1. *Earl of March v. Pigott*, 5 Burr. 2804.

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decision of the House of Lords, if the wager had been laid with a lord of parliament or a judge, it would have been void from its tendency, without considering whether a bribe was really intended nor not."—*Judgment for the defendant.*¹

On the
sex of the
Chevalier
d'Eon.

I shall close this head with the celebrated wager upon the sex of the CHEVALIER D'EON.² He had served as a military officer, had acted as a diplomatist, and had fought duels, but his appearance was very effeminate; and after he had resided some years in England, frequenting race-courses and gaming-houses in male attire, Mr. Dacosta wagered a large sum with Mr. Jones that the supposed Chevalier was a woman, and brought an action to recover the amount. The case coming on before Lord Mansfield at *Nisi Prius*, he allowed the trial to proceed, and, after many witnesses had been examined, the jury found a verdict for the plaintiff. But the case was subsequently brought before the whole court,—when, the verdict being admitted to be according to the fact, the question was learnedly discussed whether the action was in point of law maintainable.

Lord Mansfield: "The trial of this cause made a great noise all over Europe; and, from the comments made upon it, and farther consideration, I am sorry that I did not at once yield to the consideration that it led to indecent evidence, and

1. *Allen v. Hearn*, 1 Term Rep. 57.

2. Charles Geneviève Louise Auguste André Timothée d'Eon de Beaumont, styled Chevalier d'Eon, a famous French diplomatist, born at Tonnerre in 1728. Having gained reputation by writing an Essay on the Finances of France, he was employed about 1755 on a mission to the court of Russia, with which he negotiated an advantageous treaty. In 1759 he served with credit as captain in the French army in Germany. A few years later he was minister plenipotentiary to London, but was superseded soon after his appointment. On his return to France, about 1777, the government, for some mysterious reason, required him to assume the female dress, which he wore for the rest of his life. Being reduced to poverty, he supported himself in his later years by giving lessons in the art of fencing. He was author of many historical and political essays. Died in 1810.—*Thomas' Biog. Dict.*

was injurious to the feelings and interests of a third person. I am sorry, likewise, that the witnesses subpoenaed had not been told they might refuse to give evidence if they pleased. But no objection to their being examined was made by the counsel for the defendant; nor did any of themselves apply for protection, or hesitate to answer. I have since heard that many of them had been confidentially employed by the person whose sex was in controversy in the way of their profession or business. That any two men, by laying a wager concerning a third person, may compel his physicians, servants, and relations to disclose what they know about his person, would have been an alarming proposition. Mere indecency of evidence is no objection to its being received when it is necessary to the decision of a civil right or criminal liability. Upon this ground we think that Mr. Justice Burnet¹ was wrong in refusing to try the case before him where a young lady brought an action of slander for saying that she had a defect in her person which unfitted her for marriage, and the defendant alleged in his plea that she had such a defect; for there, if the statement was false, the plaintiff had received a grievous injury, for which she was entitled to exemplary damages; and if it was true, the defendant ought to have been freed from the charge of a malicious lie, however he might still be liable to censure for indelicately proclaiming the truth. But if it had been merely an action on a wager whether the young lady had such a defect, it would have been nearly the present case, and I think the judge would have been well justified in refusing to proceed with the trial; or, declaring that the supposed contract was

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1. Sir Thomas Burnet, third and youngest son of the bishop, was bred at Merton College, Oxford, after which he became a student of the Temple, where for some time he led a dissipated life; but at last took a serious turn, and one evening his father, observing him to be very thoughtful, asked what he was meditating. "A greater work," replied he, "than your lordship's History of the Reformation." "Ay!" said the bishop, "what is that?" "The reformation of myself," answered the young man; and he fulfilled his promise, by becoming one of the best lawyers of his time. He published several political pamphlets, some poems, and the posthumous history of his father, with a memoir of the bishop. He was for some time consul at Lisbon, and on his return resumed the profession of the law. In 1736 he was called to the degree of a sergeant, and in 1741 became one of the justices of the Common Pleas. Died Jan. 5, 1753.—*Cooper's Biog. Dict.*

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void, in instantly nonsuited the plaintiff. Indifferent wagers upon indifferent matters, without interest to either of the parties, are certainly allowed by the law of this country. Whether it would not have been better to treat all wagers as gaming contracts, and to have held them void, it is now too late to discuss; but there are exceptions to the rule, on the ground of injury to the community or to individuals. Suppose a wager between two men, that one of them, or that a third person, shall do some criminal act. Suppose I lay you a wager that you do not beat such a person; you lay that you will. Suppose a wager that the act shall be repeated in Covent Garden,¹ for

1. Southampton Street—where phosphorus was first manufactured in England—leads into *Covent Garden*, a space which, as early as 1222, under the name of Frère Pye Garden, was the convent garden of Westminster, and which through all the changes of time and place has ever remained sacred to the fruits and flowers of its early existence, so that, though they are no longer growing, it has never lost its old name of "garden." At the Dissolution Edward VI. granted the garden to his uncle the Protector Somerset, but, reverting to the crown on his attainder, it was afterwards granted, with the seven acres called Long Acre, to John, Earl of Bedford, who built his town house on the site now occupied by Southampton Street. It was not till 1621 that the houses around the square were built from designs of Inigo Jones, but then, and long afterwards, the market continued to be held under the shade of what Stow calls "a grotto of trees," hanging over the wall of the grounds of Bedford House (now commemorated in Bedford Street), which bounded Covent Garden on the south. Many allusions in the works of the poets of Charles II.'s time show that this, which Sydney Smith calls "the amorous and herbivorous parish of Covent Garden," was then one of the most fashionable quarters of London—in fact, that it was the Belgrave Square of the Stuarts, and it will always be classic ground from its association with the authors and wits of the last century. When Bedford House was pulled down in 1704, the market gradually, by the increasing traffic, became pushed into the middle of the area, and finally has usurped the whole, though a print by Sutton Nichols shows that as late as 1810 it only consisted of a few sheds.

It was in Covent Garden that the famous "Beefsteak Club" was founded in the reign of Queen Anne, and meeting every Saturday in "a noble room at the top of Covent Garden Theatre, would never suffer any dish except Beef Steaks to appear." The Club was composed "of the chief wits and illustrious men of the nation"; the badge worn by the members being a golden gridiron suspended round the neck by a green ribbon. The Club was burned in 1808, and Handel's organ and the manuscript of Sheridan's Comedies were destroyed in the fire. Amongst those who lived in the square were Sir P. Lely and Sir Godfrey Kneller.—*Hare's Walks in London*, vol. i. p. 19.

which Sir Charles Sedley¹ was prosecuted. Would a court of justice try any of these wagers, tending to crime and immorality? We are told that the objection is not supported by adjudged cases; but I say you offend, you misbehave, by laying such a wager. Upon such a wager would a court of justice try whether a married woman has committed adultery, or an un-

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1. Sir Charles Sedley, an English poet, who was one of the wits of the court of Charles II. His daughter became mistress to James II., who created her Countess of Dorchester; but Sir Charles was zealous for the Revolution, and being asked the reason, answered, "From a principle of gratitude; for since his majesty has made my daughter a countess, it is fit I should do all I can to make his daughter a queen." His poems are licentious, but are written in an elegant style; he also wrote some plays, which are remarkable for little else than their loose tone of morality. Born in Kent, 1639, died 1701.—*Beeton's Biog. Dict.*

Pepys in his Diary of July 1st, 1663, says of this incident: "To Sir W. Batten, to the Trinity House; and after dinner we fell a talking, Mr. Batten telling us of a late triall of Sir Charles Sedley the other day, before my Lord Chief Justice Foster, and the whole bench for his debauchery a little while since at Oxford Kate's. [The details in the original are too gross to print. What can be mentioned is told by Dr. Johnson in the Lives of the Poets, in his life of Sackville, Lord Dorset: "Sackville, who was then Lord Buckhurst, with Sir Charles Sedley and Sir Thomas Ogle, got drunk at the Cock, in Bow Street, by Covent Garden, and going into the balcony exposed themselves to the populace in very indecent postures. At last, as they grew warmer, Sedley stood forth naked, and harangued the populace in such profane language, that the publick indignation was awakened; the crowd attempted to force the door, and being repulsed, drove in the performers with stones, and broke the windows of the house. For this misdemeanor they were indicted, and Sedley was fined 500 pounds; what was the sentence of the others is not known. Sedley employed Killigrew and another to procure a remission of the King, but (mark the friendship of the dissolute!) they begged the fine for themselves, and exacted it to the last groat.] It seems my Lord and the rest of the Judges did all of them round give him a most high reproofe; my Lord Chief Justice saying, that it was for him, and such wicked wretches as he was, that God's anger and judgments hung over us, calling him sirrah many times. It's said they have bound him to his good behaviour (there being no law against him for it) in 5,000*l.* It being told that my Lord Buckhurst was there, my Lord asked whether it was that Buckhurst that was lately tried for robbery; and when answered Yes, he asked whether he had so soon forgot his deliverance at that time, and that it would have more become him to have been at his prayers begging God's forgiveness, than now running into such courses again."

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married woman has had a child? The party to be affected would have a right to say, 'How dare you bring my name in question?' If a husband complain of adultery, he shall be allowed to try it, for he is a party interested and aggrieved. So, upon a right to the inheritance of a freehold estate, it may be necessary to try whether the claimant's mother was married before his birth. But third persons shall not, by laying a wager wantonly, expose others to odium or ridicule.—We come to the present case. Here is a person who represents himself to the world as a man, is stated on the record to be *Monsieur le Chevalier d'Eon*, has acted in that character in a variety of capacities, and has his reasons and advantages in so appearing. Shall two indifferent people, by a wager between themselves, try whether he is a cheat and impostor, and be allowed to subpoena all his intimate friends and confidential attendants to give evidence that will expose him all over Europe? Such an inquiry is a disgrace to judicature. If the Chevalier had applied to the Court and said, 'Here is a villainous wager laid to injure me; I, as a stranger, whose interest it affects, pray you to stop it,' we should instantly have done so. We have no authority to declare all wagers illegal; a wager whether the next child shall be a boy or a girl hurts no one. But are we to lay down doctrine which would give validity to a wager whether a young woman has a mark upon a particular part of her body, and authorize the calling of her chambermaid to prove it? The present wager, being indecent in itself, and manifestly a gross injury to a third person, is not to be endured."—*Judgment for the defendant*.¹

1. *Dacosta v. Jones*, Cowp. 729. Although the verdict was set aside on legal grounds, it was allowed to settle many other bets which had been laid on the same question. The Annual Register for 1765, p. 167, says: "By this decision, no less a sum than 75,000*l.* will remain in this country which would otherwise have been transmitted to Paris. The Chevalier has left England, declaring that she had no interest whatever in the policies opened on her sex." The Chevalier, then assuming female attire, remained in France, supported by a pension from the French government for having been long a spy of Louis XV., till the breaking out of the Revolution in 1790. He then came to England, and, being in great distress, lived with a lady of reputation as her companion; but, dying in the year 1810, was found, on a post-mortem examination, to be indeed of the sex which he had originally claimed, and, in all respects, perfectly formed.

Lord Mansfield most usefully asserted the power of the common law to punish those who are guilty of offences *contra bonos mores*, although there might not have been any prior prosecution for the specific offence.

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Conspiracy
to corrupt
a young
female
indictable.

An application was made against Sir Francis Blake Delaval, one Bates a music master, and others, for a conspiracy to corrupt the chastity of a young female. This person, at the age of fifteen, was bound apprentice to Bates, to be instructed in the musical art; and, being possessed of great beauty as well as musical genius, she attracted the notice of Sir Francis, then a fashionable libertine of much notoriety. She was assigned over to him for the sum of 200*l.*, which Bates received by the hands of his tailor, and then she was indentured to him *to learn music*, and she was made to covenant that she would live with him as his apprentice, and that she would not quit his apartments. Having thus got possession of her, he paraded her about in public as his mistress. The counsel for the defendants contended that, however immoral their conduct had been, they were not guilty of any offence cognizable in a criminal court.

Lord Mansfield: "It is true that many offences of the incontinent kind are to be considered as *sins* only, and must be left to the conscience of the offender, or penance to be imposed by the Ecclesiastical Court *pro salute animæ*.¹ But this court has the superintendence of offences *contra bonos mores*,² and a *conspiracy* to corrupt the innocence of a young female is an offence which may be made the subject of an information or indictment, and which we can visit with fine and imprisonment or infamous punishment. If Sir Francis Delaval had merely seduced this unfortunate girl by his own solicitations, he might only have been liable to an action for damages at the suit of her father; but entering into a wicked bargain by which he has purchased her from another, the two must be

1. "For the safety of the soul."

2. "Against good morals."

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considered as *conspiring* to ruin her, and they are both guilty of a misdemeanor. Let the rule for filing a criminal information against them be absolute."¹

Lord
Grosvenor
v. Duke of
Cumber-
land.

Lord Mansfield acquired great popularity by this declaration of the law, which gave a salutary check to the abominable practices of the plotters against female innocence; but he incurred much obloquy by his direction to the jury in the great *crim. con.* cause of the *Earl of Grosvenor*² v. *His Royal Highness the Duke of Cumberland*. The plaintiff's counsel having urged the exalted rank of the defendant as a ground for very heavy damages, the judge said that "the rank of the defendant was wholly immaterial; that they should consider the cause as if it were between A. and B.; and that they were

1. Holliday, 214. I wish that those who, for several years past, have been bringing forward bills "for the protection of females" would be contented with the law as laid down here, and abandon their well-meant but injudicious attempts. Where there is a *conspiracy*, the law is already strong enough to punish; and a simple departure from the rules of chastity cannot be made the subject of criminal legislation.

2. Richard Grosvenor, first Earl Grosvenor (1731-1802), was eldest son and heir of Sir Robert, sixth baronet. He was educated at Oriel College, Oxford. At the coronation of George III., Sept. 22, 1761, he officiated as grand cupbearer, as his uncle had done at the coronation of George II. For parliamentary services, "at the recommendation of Mr. Pitt," says Walpole, he was raised to the peerage as Baron Grosvenor of Eaton, April 8, 1761, and July 5, 1784, was created Viscount Belgrave and Earl Grosvenor. He married, July 19, 1764, Henrietta, daughter of Henry Vernon of Hilton Park, Staffordshire. Their marriage was unhappy. The husband gave his wife "no slight grounds of alienation" (Stanhope, *History of England*, V. 460). Lady Grosvenor is described by Walpole as "a young woman of quality, whom a good person, moderate beauty, no understanding, and excessive vanity had rendered too accessible" to the attentions of Henry, Duke of Cumberland, brother of George III. (*Memoirs*, iv. 164). In an action for criminal conversation brought before Lord Mansfield in July 1770, the jury awarded 10,000*l.* damages against the prince. In 1772 Lord Grosvenor settled 1200*l.* a year upon his wife by arbitration. A fine portrait of her by Gainsborough is at Eaton. Earl Grosvenor died at Earl's Court, near London, Aug. 5, 1802. His wife married Sept. 1, 1802, Lieutenant General George Porter, M.P., who afterwards became Baron de Hochepeid in Hungary. She lived until Jan. 2, 1828.—*Stephen's Nat. Biog.*

merely to give the plaintiff a compensation for the loss of his wife's society—this loss not being lessened or enhanced by the consideration whether the wrong-doer was a peasant or a prince." We may safely acquit him of all corruption and sycophancy in this direction; and it is somewhat countenanced by the converse proposition of an eminent judge in a similar action which a nobleman brought against his coachman, and in which the jury gave 10,000*l.* damages. But it is quite at variance with the usual evidence in these cases that the defendant is a man of large property, and in reality the disgrace and sufferings of the plaintiff may be much greater from the consideration that the destroyer of his domestic happiness is nearly related to the throne.¹

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1. 2 Evans, 359. Junius took good advantage of this direction in his Letter to Lord Mansfield:—"An action for criminal conversation being brought by a peer against a prince of the blood, you were daring enough to tell the jury that, in fixing the damages, they were to pay no regard to the quality or fortune of the parties; that it was a trial between A. and B.; that they were to consider the offence in a moral light only, and give no greater damages to a peer of the realm than to the meanest mechanic. I shall not attempt to refute a doctrine which, if it was meant for law, carries falsehood and absurdity upon the face of it, but, if it was meant for a declaration of your political creed, is clear and consistent. Under an arbitrary government, all ranks and distinctions are confounded. The honor of a nobleman is no more considered than the reputation of a peasant; for, with different liveries, they are equally slaves." The bad law of the Judge, however, was soon forgotten, amid the ridicule excited by the correspondence of the lovers. "Their letters," says Horace Walpole, "were produced at the trial, and never was the public regaled with a collection of greater folly! Yet to the lady's honor be it said, that, bating a few oaths which sounded more masculine than tender, the advantage in grammar, spelling, and style was all in her favor. His Royal Highness's diction and learning scarce excelled that of a cabin-boy, as those elegant epistles existing at present may testify. Some, being penned on board of ship, were literal verifications of Lord Dorset's ballad,—

" ' To you fair ladies now on land,
We men at sea do write;
But first would have you understand
How *hard* 'tis to indite. ' "

(Mem. Geo. III., iii. 104.) One of these effusions thus began:

"Hear I am all by myself at sea!"

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On the great question of literary property, on which, for the first time after Lord Mansfield presided in the Court of King's Bench, the judges were divided, he particularly distinguished himself, contending on (I think) unanswerable grounds that, by the common law, an author, after printing and publishing his work, is entitled to prevent others from reprinting and publishing it without his leave,—which would amount to a perpetual copyright in him and his family. The three puisnies began—WILLES and ASTON *pro*, and YATES *contra*.

Literary
property.

Lord Mansfield: "This is the first instance of a final difference in this Court since I sat here. Every order, rule, judgment and opinion has hitherto been unanimous. That unanimity never could have happened if we did not, among ourselves, communicate our sentiments with great freedom; if we did not form our conclusions without any prepossession to first thoughts; if we were not always open to conviction, and ready to yield to each other's reasons. We have all equally endeavored at that unanimity upon this occasion; we have talked the matter over many times; I have communicated my thoughts in writing, and I have read the three arguments which have just been delivered. In short, we have equally tried to convince or to be convinced. But in vain: we continue to differ, and, whoever is right, each is bound to abide by and deliver that opinion which he has deliberately formed."

I can only introduce a few of the observations by which he so ably availed himself of the concession, that the author, before publication by himself, could prevent its being published by another; and met the metaphysical reasoning, that there can be no property in that which cannot be perceived by the senses:—

"It has all along been expressly admitted, that by the common law an author is entitled to the copy¹ of his own

1. He had explained that he used "*copy* in the technical sense in which it had been used for ages, to signify the incorporeal right to the sale, printing, and publishing of somewhat intellectual, communicated by letters."

work until it has been once printed and published by his authority. The property in the copy thus limited is equally an incorporeal right as much as that contended for, to present a set of ideas communicated in a set of words by conventional characters. It is equally detached from the manuscript, or any other physical existence whatsoever. The property, whether limited or extended, is equally incapable of being violated by crime indictable, and is only violated by another's printing without the author's consent, which is a civil injury. The remedy is the same by an action on the case for damages, or a bill in equity for specific relief. No action of detinue, trover, or trespass *vi et armis*,¹ lies; for the limited property is equally a property in notion, and has no corporeal, tangible substance. No disposition, no transfer of the paper upon which the composition is written, marked or impressed, though it gives the *power* to print and publish, can be construed a conveyance of the *right* to do so, without the author's express consent, much less against his will. Dean Swift² was certainly

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1. "By force and arms."

2. Jonathan Swift (*b.* 1667, *d.* 1745) was born at Dublin, and educated there at Trinity College. In 1688 he was received into the family of Sir William Temple, to whom he was related. In 1695 he was ordained, but soon resigned a small Irish living, and returned to reside with Temple. During his residence with Temple began his mysterious connection with Hester Johnson, the "Stella" of his Journal. In 1699, failing of promotion to an English living, Swift went to Ireland as chaplain to Lord Berkeley, and was scantily rewarded by receiving, not the deanery which he had expected, but the living of Laracor, in the county of Meath. Swift began his political career as a Whig. In 1704 he published the "Tale of a Tub," a satire on the corruptions of early Christianity, and the results of the Reformation. The "Battle of the Books" (1704), on the literary dispute about the letters of Phalaris, added to his reputation. During Anne's reign he paid frequent and protracted visits to England, and became closely connected with the leading Tories. During the last five years of Queen Anne's reign he played a very prominent part in English politics as the leading political writer of the Tories, and the friend and confidant of their leaders. He was on terms of the closest intimacy both with Harley and Bolingbroke, and attempted to allay the quarrel between the rival statesmen. His pamphlet, "The Conduct of the Allies," was of immense service to the Tory party; and in a paper called the "Examiner," he upheld their course with zeal, and supplied the ministry with arguments. In 1713 he received the deanery of St. Patrick's, Dublin. There he is thought to have been secretly married to Stella. She died in 1728. On the death of Anne,

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proprietor of the paper upon which Pope's letters were written. I know that Mr. Pope had neither the original nor any transcript of them, and that he had only a very imperfect memory of their contents. Yet the Lord Chancellor held that he was entitled to stop the publication of them by a printer into whose hands they had fallen.¹ If the *copy* belongs to an author after publication, it certainly belonged to him before. But if it does not belong to him after, where is the common law which says there is such a property before? All the metaphysical subtleties from the nature of the thing may be

the dean retired to Dublin, a disappointed man. In 1724 he wrote the "Drapier Letters," an attack on the monopoly to coin halfpence which had been granted to a man named Wood; and this was followed by several other tracts on Irish affairs in which the treatment of Ireland by the English government was satirized with unsurpassed power. In writing of Ireland Swift thought chiefly of the English colony in Ireland; but his writings made him the idol of the whole Irish people. In 1726 appeared his greatest work, "Gulliver's Travels." It is a satire on mankind with contemporary allusions. Swift outlived his genius, and sank into idiotcy; the last years of his life were spent in almost complete mental darkness. Apart from his literary renown, Swift owes his position in history to the fact that in his writings we have the Tory view of politics in Queen Anne's reign set forth with the greatest literary skill. In Irish politics he is the typical representative of the Protestant ascendancy in Ireland, whose attack on the English government prepared the way for Grattan and the Volunteers of 1779.—*Low and Pull. Dict. of Eng. Hist.*

1. In *Pope v. Curl*, 2 Atk. 342, Curl, a London bookseller, was enjoined from selling a volume containing the private correspondence between Pope and Swift, which had been published in Ireland and reprinted in England without authority. When the case came before Lord Hardwicke on a motion to dissolve the injunction, it was contended on the part of the defendant, first, that ordinary private letters, written without any intention of publication, are not entitled to protection; and, second, that a letter sent by one person to another is a gift to the receiver, who thereby becomes vested with the entire property in it. Lord Hardwicke pronounced these theories unsound, and held that it was immaterial whether the letters had or had not been written for publication; that before transmission there was an absolute property in the writer; that the receiver acquired only a special or qualified property, extending, perhaps, to the paper, but not to the contents of the letter, and that this gave him no right of publication. The injunction, therefore, was continued as to the letters written by Pope, but dissolved as to those which he had received, and over which he clearly had no control. The general principles laid down in this case have become the recognized law in England and in the United States.—*Drone on Copyright*, 127.

equally objected. It is incorporeal. It relates to ideas detached from any physical existence. It has none of the *indicia* of property. The same string of questions may be asked upon the right before publication. Is it real or personal? Does it go to the heir or executor? Is it assignable or not? Can it be forfeited? Can it be taken in execution? Can it be vested in the assignees of a bankrupt? The common law as to *copy* before publication cannot be founded upon custom; as, till the injunction in 1732 against Curl publishing Mr. Pope's letters, the case of piracy before publication never existed; it never was put or supposed. From what source, then, is the common law drawn which is admitted to be so clear in respect to the *copy* before publication? We are told, because it is just that an author should reap the pecuniary profits of his own ingenuity and labor; it is just that another should not use his name without his consent; it is fit that he should judge when to publish, or whether he will ever publish; it is fit that he should not only choose the time but the manner of the publication—how many volumes—what number of copies—what paper—what print; it is fit he should choose to whose care he will trust the accuracy of the impression, and to whose honesty,—that interpolations may not be foisted in. These considerations, I allow, are sufficient to show that it is agreeable to the principles of right and wrong, the fitness of things, convenience, and policy, and therefore to the common law, to protect the *copy* before publication. But the same considerations hold with equal strength after the author has published. He can reap no pecuniary profit, if the next day his work may be pirated upon worse paper, and in worse print, and at a lower price. The author may not only be deprived of any profit, but be ruined by the expense he has incurred. He is no more master of the use of his own name. He has no control over the correctness of his own work. He cannot prevent additions. He cannot retract errors. Any one may print, pirate, perpetuate, aggravate his imperfections, and may propagate sentiments under his name which he never entertained, or, upon more deliberation, disapproves, repents, and is ashamed of. For these reasons it seems to me equally just and fit to protect the *copy* after publication. The general consent of this kingdom for ages is on the affirmative side. The legislative authority has taken it for granted, and interposed penal-

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XXXIV. opinion of such a man as Milton, speaking after much consid-
eration on the very point, is much stronger than any fanciful
analogies from gathering acorns, or acquiring a right to a field
by possession, where the writers referred to, instead of having
this question in contemplation, speak of an imaginary state of
nature before the invention of letters."

The pure common-law right was never finally
decided ; for the case being brought by writ of error
before the House of Lords, their Lordships, by the
advice of Lord Chancellor Camden, determined that
" whatever the right of the author might be at common
law, it was now limited to the period specified in the
statutes passed for his protection, during which specific
remedies are afforded to him " ; and, although I entirely
assent to the reasoning that no right to print and pub-
lish a book is acquired by purchasing a printed copy of
it, any more than by a present from the author of a
MS. copy before publication, I admit that this is a fit
subject for legislative enactment. Perhaps there could
not be a better arrangement for authors, and for the
public, than by the recent statute, which gives an
efficient monopoly during the author's life and a rea-
sonable time afterwards for the benefit of his family,
and secures the free circulation of the work in all time
thereafter.

Lord Mansfield's
decisions
on the law
of evidence. In looking through the reports of Lord Mansfield's
decisions, it is wonderful to observe how many of them
turn upon the law of evidence ; but we must remember
that " he found it of brick, and that he left it of mar-
ble." It was indispensably necessary for him in this
department to overrule many *dicta* to be found in the
old Reporters ; and, early in his career, he said, " We do
not sit here to take our rules of evidence from *Siderfin* ¹

1. This Mr. Siderfin was a Somersetshire gentleman, and proved
a very good lawyer, as the book, two volumes in folio of reports of
his, shows. But he was not a better lawyer than a kind and good-

and *Keble*.”¹ The whole of it was “judge-made law,” and much of it made by judges of very narrow understandings, who held, among other things, that “Jews, Turks, and infidels are not to be examined as witnesses because they cannot kiss the Holy Gos-

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natured friend ; having very good qualities under a rustic behavior and more uncouth physiognomy. He used at the Temple to be described by his hatchet face, and shoulder-of-mutton hand, and he walked splay, stooping and noddling. His lordship used his conversation chiefly for his assistance in matters of law, wherein he was of great use and service to him. For when his multiplicity of active business would not allow him to consult in cases that he wished well to, as well for friendship and relation as for fees, he usually substituted Mr. Siderfin, to consult the books for him, as he himself had done before for Sir Jeffry Palmer. And this leading the persons concerned to attend him by Mr. Attorney's direction, they, finding him industrious, careful, and learned, continued to use him as their immediate counsel in other smaller concerns, wherein Mr. Attorney was not concerned ; which brought him into very considerable business, as well in conveyancing as at the bar. For his probity, and exact justice to his clients, was a great recommendation of him ; for he had no tenters to hang their dependences upon, to make them drop fat, as some have had and done. But he died before his friend Mr. Attorney was made the chief of the Common Pleas ; else, it is probable he might, by his means, have been taken into the wheel of preferment. The only thing which I ever heard him blamed for, was the marrying a lady, that was his ward, before her minority was expired ; which, by the world's allowance, makes her entirely capable to dispose of herself. And it seems an ill use made of a trust, and the authority of a guardian, to take advantage of a minor's being a great fortune much above him, and anticipate her free choice, by influencing her to marry him. But the lady had no cause to repent ; for he was so good a man, as could not but make her happy ; and that probably, young as she was, she was satisfied of, by experience of his general behavior towards her and others ; which might make her determine so early. For she had a very good understanding, and had occasion to serve herself of all her thinking and judgment under an immense misfortune that befel her when she was a widow. For being a great fortune, one Sarsfield ran away with her, and carried her over into France, where, by the greatest accident, the abuse was discovered, and the raptor seized, she protected, and both sent home ; and the former, upon her most ingenious relation of the fact, sworn in a trial at the King's Bench bar, convict and punished.—*North's Life of Guilford*.

1. Joseph Keble, an English writer upon law, born in London about 1632, died in 1710. Of his numerous works we may cite “ An Explanation of the Laws against Recusants ” (1681).—*Thomas' Biog. Dict.*

CHAP. XXXIV. pels." Considering that, before juries, the verdict depended upon the impression made upon the minds of unlearned men, he was bound to exclude all evidence which was more likely to mislead than to assist them; but still he leaned against the old maxims by which evidence was rejected instead of being sifted, and he wished that objections should be pointed against the credit rather than against the competency of witnesses. He, on one occasion, fell into a considerable blunder, by admitting witnesses to contradict a written agreement signed by the parties;¹ but the great bulk of his decisions respecting the admission or rejection of evidence have been received with approbation, and to them chiefly we are indebted for our established rules upon this important subject. These place the English law for once above the Roman Civil Law itself, which, notwithstanding its general exquisite good sense, is here arbitrary and capricious. Lord Mansfield obtained the highest renown in this department by his committing for perjury the attesting witnesses to a will who falsely swore that they never saw it executed by the testator, and permitting the will to be established by the testimony of other witnesses who were acquainted with the testator's handwriting.²

Famous
case of
Perrin v.
Blake.

I must now mention the case of *Perrin v. Blake*, which divided the profession of the law into bitter factions for many years, and which is still famous in the traditions of Westminster Hall. I am sorry to say that in the course of the discussions which arose upon it Lord Mansfield got into a very awkward scrape, from which he was not able to extricate himself with credit; and that it afforded his enemies plausible grounds for charging him with rashness, obstinacy, and disingenuousness. The following statement, which necessarily

1. *Meres v. Ansell*, 3 Wils. 275.

2. See 2 Evans, 300-359.

enters into some of the subtleties of English conveyancing, had better be passed over by *non-learned* readers; but without it this memoir would sadly disappoint many of my legal brethren, who, when they first see "THE LIVES OF THE CHIEF JUSTICES," will eagerly turn to discover which side the author takes in the great "*Perrin-oblakeian* controversy." A testator, seised in fee of lands, duly made his will in the following form :

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"It is my intent and meaning, that none of my children should sell or dispose of my estate for longer term than his life ; and to that intent I give, devise, and bequeath all the rest and residue of my estate to my son John, and any son my wife may be *enceinte* of at my death, for and during the term of their natural lives ; the remainder to my brother-in-law Isaac Gale and his heirs, for and during the natural lives of my said son John and the said infant ; the remainder to the heirs of the bodies of my said son John and the said infant, lawfully begotten or to be begotten ; the remainder to my daughters for and during the term of their natural lives, equally to be divided between them ; the remainder to my said brother-in-law, Isaac Gale, during the natural lives of my said daughters respectively ; the remainder to the heirs of the bodies of my said daughters, equally to be divided between them ; and I do declare it to be my will and pleasure, that the share or part of any of my said daughters that shall happen to die shall immediately vest in the heirs of her body in manner aforesaid."

The wife was not *enceinte* ; and John, the son, insisting that under the will he was tenant in tail, suffered a recovery, and alienated. On his death the person next in remainder, contending that John was only tenant for life, brought an action to recover the lands ; and the great question was, whether he took an estate for life or in tail ? According to the celebrated rule in *Shelley's Case*, established in the reign of Elizabeth on feudal principles and on prior authorities, "where an estate of freehold is given to an ancestor, and in the

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same gift or conveyance an estate is given either mediately or immediately to his heirs, these are construed words of limitation, not of purchase, and he himself takes an estate tail." ¹ Now by this will there was an estate for life limited to John, with a remainder to the heirs of his body. Therefore, if the rule was to be applied, John was tenant in tail, with the power of alienation. But the testator had declared his intention to be that none of his children should sell or dispose of the estate, and he had interposed a limitation to Isaac Gale during John's life. It was contended, therefore, that he had manifested a clear intention that John should take for life only, and that the heirs of John should take by *purchase* (in the language of the law), and not by *descent*; *i. e.* immediately from the testator, and not as inheriting from the first taker. There had been a solemn decision in *Coulson v. Coulson*, before Lord Mansfield, that such words, intimating an intention by the testator that the first taker should not have a power of alienation, did not overcome the effect of giving by the same instrument an estate for life to a devisee, with a remainder to the heirs of his body, upon the supposition that the testator must be supposed to have used the words of these limitations in their usual technical sense, and that their effect was not to be controlled by other words indicating a wish or intention inconsistent with or derogatory to the estate tail so created. The universal opinion of lawyers now is, that *Perrin v. Blake* should at once have been determined in conformity to this rule, which had long been acquiesced in and acted upon. But, unfortunately, Lord Mansfield being intoxicated by the incense offered up to him, or misled by an excessive desire of preferring what he considered principle to authority, took a different view of the construction of the will, and resolved

1. *Shelley's Case*, 1 Rep. 93a.

that John should only be considered as having taken an estate for life. Two of the puisnies (Willes and Aston) were induced to agree with him, but the stout-hearted Yates stubbornly stood out for the rule in *Shelley's Case* and the authority of *Coulson v. Coulson*. CHAP.
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Lord Mansfield: "The law having allowed a free communication of intention to the testator, it would be strange to say to him, 'Now you have communicated your intention, so that every body understands what you mean; yet because you have used a certain expression of art, we will cross your intention and give your will a different construction, though what you meant to have done is perfectly legal, and the only reason for contravening you is because you have not expressed yourself as a lawyer.' My examination of this question always has, and, I believe, ever will, convince me that the legal intention, when clearly explained, is to control the legal sense of a term of art, unwarily used by the testator. It is true, in *Shelley's Case* the rule is laid down as stated to-day; but that rule can never affect this question. I must agree with my brothers Aston and Willes, on the grounds that the intention must govern; that here the intention is manifest that *Shelley's Case* is no universal proposition, and that there is no sound distinction between a devise of the legal estate and of a trust, or between an executory trust and one executed."¹ [After commenting on the cases, he thus concluded:] "I admit that there is a devise to John the testator's son for life, and in the same will a devise to the heirs of his body; and I agree that this is within the rule of *Shelley's Case*, and I do not doubt that there are and have been always lawyers of a different bent of genius and different course of education, who have chosen to adhere to the strict letter of the law, and they will say that *Shelley's Case* is an uncontrollable authority, and they will make a difference between trusts and legal estates, to the harassing of a suitor; but if the courts of law will adhere to the mere letter of the law, the great men who preside in Chancery will ever discover new ways to creep out of the lines of law, and will tamper with equity. My opinion, therefore, is,

1. These words are put into Lord M.'s mouth, but I cannot believe that he spoke them, as in executory trusts the same effect is not given to technical language.

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XXXIV. that the intention being clear beyond doubt to give an estate for life only to John, and an inheritance successively to be taken by the heirs of his body, and his intention being consistent with the rules of law, it shall be complied with in contradiction to the legal sense of the words used by the testator so unguardedly and ignorantly."¹

This judgment was brought by writ of error into the Exchequer Chamber, and was there reversed by the opinions of all the Judges of the Common Pleas and Exchequer except Chief Justice De Grey and Baron Smyth.² Many, however, thinking that Lord Mansfield must be infallible, still backed his opinion, and the case was brought by another writ of error to the court of *dernier ressort*, where he had a voice, and

1. Judge Yates was so much hurt by the sarcasms thus levelled against him, that he resigned his seat in the Court of King's Bench, and transferred himself to the Court of Common Pleas.

2. Mr. Justice Blackstone's argument on this occasion was so inimitably exquisite, that his reputation as a lawyer depends upon it still more than upon his COMMENTARIES, and I cannot deny myself the pleasure of copying a few sentences from it: "It is the best and safest way to adhere to those criteria which the wisdom of the law has established for the certainty and the quiet of property. Every testator when he uses the legal idiom shall be supposed to use it in its legal meaning. If the contrary doctrine were to prevail,—if courts, either of law or equity (in both of which the rules of interpretation must always be the same), if these, or either of them, should indulge an unlimited latitude of forming conjectures upon wills, instead of attending to their grammatical or legal construction, the consequence must be endless litigation. Every title that belongs to a will must be brought into Westminster Hall; for if once we depart from the established rule of interpretation without a moral certainty that the meaning of the testator requires it, no interpretation can be safe till it has had the sanction of a court of justice. The law of real property in this country is now formed into a fine artificial system, full of unseen connections and nice dependencies, and he that breaks one link of the chain endangers the dissolution of the whole. Will it be said that when the testator's intent is manifest, the law will supply the proper means to carry it into execution, though he may have used improper ones? This would be turning every devise into an executory trust, and would be arming every court of law with more than the jurisdiction of a court of equity; a power to frame a conveyance for the testator, instead of construing that which he has already framed."

where his influence was unbounded. Such apprehensions were entertained, that the contending parties agreed to an equal division of the property.

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But this compromise by no means put an end to the controversy between the *Shelleyites* and *Anti-Shelleyites*, which continued to rage with increased violence for years. Many pamphlets were written for and against the rule, and for and against the application of it to *Perrin v. Blake*. Sir James Burrow, the Master of the Crown Office in the Court of King's Bench, and the reporter of Lord Mansfield's decisions, tried to protect his patron from the attacks aimed at him, and wrote a warm panegyric upon him, describing the felicity of the times under such a Chief Justice, and expressing wonder at the multiplicity of the business now brought before the court, and the ability and celerity with which it was despatched, to the universal satisfaction of mankind. This, unfortunately, excited the indignation of Mr. Fearne,¹ the celebrated conveyancer, a man of as acute understanding as Pascal² or Sir Isaac

Controversy respecting the contradictory opinions given by Lord Mansfield.

1. Charles Fearne, an English jurist and writer of high reputation, born in London in 1742. His chief work is an "Essay on Contingent Remainders" (1772; 4th edition, enlarged, 1791). Died in 1794. "It was reserved for Mr. Fearne," says Judge Story, "to honor the profession by a treatise so profound and accurate that it became the guide of the ablest lawyers, yet so luminous in method and explanations that it is level to the capacity of every attentive student. He has in fact exhausted the subject, and this *chef-d'œuvre* will forever remain a monument of his skill, acuteness, and research."—*Thomas' Biog. Dict.*

2. Blaise Pascal, a French author, born in Clermont, Auvergne, June 19, 1623, died in Paris, Aug. 19, 1662. His father directed the studies of Pascal to languages and general literature, avoiding everything connected with the exact sciences. But without assistance, and ignorant of the very rudiments of mathematics, the boy secretly applied himself to drawing and reflecting upon geometrical figures, until he had gone through a series of definitions, axioms, and demonstrations as far as the 32d proposition of Euclid. On discovering this, his father gave him mathematical instruction. Blaise was soon admitted to the meetings of scientific societies, where he astounded the most learned; and at the age of sixteen he composed a "Treatise on Conic Sections." In 1639 he went to Rouen, where he invented a

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Newton.¹ He had been as much shocked by the disrespect shown to the rule in *Shelley's Case* as if it

calculating machine, the *vinaigrette* (wheel-barrow chair), the *haquet* (a kind of dray), and, according to some, the hydraulic press. His health was seriously impaired by his labors, and his subsequent life was a succession of sufferings. In 1648 his brother-in-law M. Périer, in accordance with instructions given by Pascal in a letter of the previous year, executed on the Puy-de-Dôme, near Clermont, and at Rouen, and Pascal himself at the Tower of St. Jacques-la-Boucherie in Paris, a series of barometrical experiments, which went far to confirm the discoveries of Galileo, Torricelli, and Descartes respecting the weight and elasticity of air. Pascal was led by these experiments to use the barometer for levelling, and for ascertaining the pressure of fluids upon the sides of the vessels containing them, and establishing the laws of their equilibrium. The last four years of his life were an almost unbroken series of bodily suffering, and charitable employments; his alms absorbed more than his income. His remains were buried in the Church of St. Étienne du Mont, where his tomb is still to be seen.—*Appl. Encyc.* vol. xiii. p. 144.

1. Sir Isaac Newton, the prince of philosophers, was born 25 Dec., 1642, at Woolsthorpe, in the parish of Colsterworth, Lincolnshire. His father died before the birth of this child, and the widow took for her second husband a clergyman of the name of Smith, by whom she had one son and two daughters. Isaac was educated at Grantham School, where he displayed his genius in the construction of several curiosities, particularly a windmill and wooden clock. He had also a turn for drawing, and took several portraits from the life. His mother, on the death of her second husband, took him home to attend the farm; but finding the business ill managed, she sent him to school again, and, in 1660, to Trinity College, Cambridge. Here he studied the mathematics with great diligence, and in 1664 made the discovery of the nature of light and colors. The next year, being obliged to leave the university on account of the plague, he conceived the idea of the system of gravitation, by seeing an apple fall from a tree in his garden. Thus, from the most simple occurrence, his penetrating mind was enabled to trace the principle which keeps the planets in motion and preserves the universe in order. In 1667 he obtained a fellowship in his college; and two years afterwards Dr. Barrow resigned to him the mathematical professorship. In 1671 he was chosen a fellow of the Royal Society; and in 1687 he was one of the delegates appointed to defend the privileges of the University of Cambridge before the High Commission Court, where he conducted the cause so ably that James II. dropped his design of obtruding a monk upon that learned body for a degree. The year following Mr. Newton was chosen into parliament for the university, as he also was in 1701. In 1696 he was made warden of the Mint, in the discharge of which office he saved the country above 80,000*l.* by the improvement of the coinage. In 1699 he was appointed master and workman of the Mint, which situation he held

had been a fundamental article of our holy religion, and he could not endure the praise bestowed upon the author of this deadly heresy. Therefore, in a new edition of his famous "Essay on Contingent Remainders," he introduced many sarcastic observations on this encomiast, which he thus concluded: "In forming an estimate of the times, we must look to the attributes of those men whose characters and conduct impart the tinge and impress the stamp. An inquiry of this kind necessarily opens with the question, *Vir bonus est quis?*¹ To which we find the answer, *Qui consulta patrum qui leges juraque servat.*"² He further, in a very offensive manner, asserted that Lord Mansfield, when Solicitor General, had himself deliberately given an opinion upon this very will, in conformity to law, "that

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till his death. On being chosen president of the Royal Society, in 1703, he resigned his professorship; and in 1705 he received the honor of knighthood from Queen Anne. He enjoyed his faculties to the close of his long life. His temper also was remarkably even, and he might almost be said to have carried patience too far, particularly in suffering other men to run away with the merit of his discoveries. This would have been the case in regard to the invention of fluxions if some of his friends had not interposed and asserted the claim of their illustrious countryman. Sir Isaac was not only a philosopher but a Christian, and spent much of his time in elucidating the sacred Scriptures; nor could anything discompose his mind so much as light and irreverent expressions on the subject of religion. He died, without a will, March 20, 1727; and on the 28th his body lay in state in the Jerusalem Chamber, from whence it was conveyed to Westminster Abbey, the pall being borne by the Lord Chancellor, two dukes, and three earls. A monument was afterwards erected to his memory; and his statue, by Roubiliac, has been placed in Trinity College. An entire edition of his works was published by Bishop Horsley, in 5 vols., 4to. Of his "Principia," published first in 1687, the best edition is that by the Jesuits, Le Seur and Jacquier, 4 vols., 4to. There is a good English translation of it by Motte, in 2 vols., 8vo. Sir Isaac also left an immense number of manuscripts, of which two only have been published, "The Chronology of Ancient Kingdoms," and "Observations on the Prophecies." His Correspondence with Professor Cotes was published by J. Edleston, 1850.—*Cooper's Biog. Dict.*

1. "Who is a good man?"

2. "He who observes the decrees of the senate, the laws, and justice."

CHAP. XXXIV. John the son took an estate tail"; and he published the following as a copy of this opinion:

"Upon the authority of the late determination in *Coulson* and *Coulson*, though I am aware how far the expression here differs from that case, I think the remainder to the heirs of the body of John will operate as a limitation to him in tail, which, by a recovery properly suffered, he might dock.

"W. MURRAY.

"April 10, 1747."

This attack would soon have been forgotten if Lord Mansfield and his friends had taken no notice of it, or had only said that he had forgotten that he ever gave such an opinion, or that upon considering the matter he had seen reason to alter it; but Mr. Justice Buller soon after took occasion publicly to say, that "he had the strongest reason to believe that no such opinion was ever given by the then Solicitor General, to whom it was ascribed,"—and Lord Mansfield, sitting by his side, himself observed—

"Since it has been mentioned, I must take notice that it is most certainly true that I never gave any such opinion as that in print, nor any opinion at all on that will in the year 1747. Several opinions had been taken at different times, as events arose, and copies of them were furnished to the Court, on the argument of *Perrin v. Blake*. There were three given by Sir Dudley Ryder, and three by myself. Of those given by myself, the first was before 1746, the second in that year, and the third in 1748. I have the copies still by me; and the third states that I had perused my two former opinions, dated so and so, and concurred therewith; viz. 'that John only took an estate for life'; which makes it impossible that I should have given a contrary opinion. The learned author has been too hasty in his publication, and must have been imposed upon."

This disavowal immediately produced a peppery pamphlet, in the shape of a letter from Mr. Fearne to Lord Mansfield, setting out a copy of the case for the

opinion of Mr. Murray, to which the opinion of 10th April, 1747, was an answer, stating that he had received them from Mr. Booth, lately deceased, who, declaring that he had seen the original, had entered them in his collections, with other opinions to the same effect, for the instruction of his pupils, and that he had dedicated to the same Mr. Booth the edition of his "Contingent Remainders" in which the disavowed opinion was first printed. He ironically added,—

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"I think it greatly to be regretted, my Lord, that my much respected friend, Mr. Booth, whom I have often heard commemorate the honor he experienced in your Lordship's intimacy and friendship during a course of several years antecedent and subsequent to the period which is said to have produced the opinion published by me, did not live to see his mistake corrected, a mistake that seems to have stood so many years recorded in those books which were the constant resort of that gentleman's professional practice. A mistake I am confident it must have been, for Mr. Booth (I appeal to your Lordship's own knowledge of that gentleman) never would have let me commit such a copy of your opinion to the press, and have admitted the dedication to himself of the book containing it, if he had thought its genuineness or accuracy in any degree questionable. Abstracted from the credit due to Mr. Booth's verbal assurance, I could not, my Lord, conceive an idea of that gentleman's recording a collection of spurious opinions, under imaginary names, as *authorities*. It was not for me to suspect the genuineness of copies thus authenticated; and, though the event has disappointed the most conclusive appearances, yet I trust, my Lord, no man is or can be culpable for not reckoning on a *possibility* that betrays all grounds of belief, and starts into *fact* under the veil of incredulity. Such an event may serve, indeed, as a caution to the world against too *implicit* a credit, even to the most *AUTHORITATIVE* of human asseverations."

The Conveyancer was generally allowed to have gained a complete triumph over the Chief Justice, and many expressed their belief that the opinions which Lord Mansfield declared he had given were all imag-

CHAP. inary; but it was afterwards clearly proved that he
XXXIV. had at least given one in accordance with his judgment, for the original was produced, and the following is a copy of it:

"I think John Williams under the will of his father was entitled only to an estate for life, either in the real or personal estate. Whether he took a remainder in tail in the real estate after a limitation to Gale, or whether the heirs of his body were to take as purchasers, may admit of great doubt; but I incline to think the heirs of his body ought to be construed words of purchase; and I ground my opinion upon the declaration with which the whole devise is introduced, which seems as strong as the words *for life only* in the case of Backhouse and Wells.

"31 Jan. 1746.

W. MURRAY."

The undoubted fact seems to be that, in the hurry of business, he had signed and forgotten both opinions,—which were, perhaps, written by *devils* or deputies. His reputation was considerably tarnished by his judgment in *Perrin v. Blake*, and still more so by the personal dispute which arose out of it.¹

But there is no sufficient ground for the general charges brought against him by malevolent or by narrow-minded persons—that in deciding civil rights he systematically disregarded the rules of the Common Law, and gave a preference to the Roman Law, to his own caprice, or to the doctrines of Equity. It may be proper here to give a specific refutation of these charges:

1. I tremble when I think how stupid my account of the affair may appear; but the *lay gents* should know, that it was not only intensely interesting when it arose, but that now, when conversation flags among us lawyers, one of us, to cause certain excitement and loquacity, will say,—“Do you think that *Perrin v. Blake* was well decided in the Court of King’s Bench?” or, “Do you believe that Lord Mansfield really gave the opinion, in 1747, which *Fearne* imputes to him?”

"In contempt or ignorance of the common law of England," says JUNIUS, "you have made it your study to introduce into the court where you preside maxims of jurisprudence unknown to Englishmen. The Roman code, the law of nations, and the opinion of foreign civilians, are your perpetual theme ; but who ever heard you mention MAGNA CHARTA or the BILL OF RIGHTS with approbation or respect ? By such treacherous arts the noble simplicity and free spirit of our Saxon laws were first corrupted. The Norman conquest was not complete until Norman lawyers had introduced their laws and reduced slavery to a system.¹ Instead of those certain positive rules by which the judgments of a court of law should invariably be determined, you have fondly introduced your own unsettled notions of equity and substantial justice. Decisions given upon such principles do not alarm the public so much as they ought, because the consequence and tendency of each particular instance is not observed or regarded. In the mean time the practice gains ground ; the Court of King's Bench becomes a court of equity ; and the judge, instead of consulting the law of the land, refers only to the wisdom of the court and the purity of his own conscience."

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Charge of
Junius
against
Lord
Mansfield
for trying
to subvert
the Com-
mon Law,
Nov. 14,
1770.

I am sorry to think of the countenance given to these misrepresentations by grave judicial authorities.

1. Here the text omits a portion of the letter which is as follows :

" This one leading principle directs your interpretation of the laws, and accounts for your treatment of juries. It is not in political questions only (for there the courtier might be forgiven), but let the cause be what it may, your understanding is equally on the rack, either to contract the power of the jury, or to mislead their judgment. For the truth of this assertion, I appeal to the doctrine you delivered in Lord Grosvenor's cause. An action for criminal conversation being brought by a peer against a prince of the blood, you were daring enough to tell the jury that, in fixing the damages, they were to pay no regard to the quality or fortune of the parties ; that it was a trial between A. and B. ; that they were to consider the offence in a moral light only, and give no greater damages to a peer of the realm than to the meanest mechanic. I shall not attempt to refute a doctrine which, if it was meant for law, carries falsehood and absurdity upon the face of it ; but, if it was meant for a declaration of your political creed, is clear and consistent. Under an arbitrary government all ranks and distinctions are confounded. The honor of a nobleman is no more considered than the reputation of a peasant, for, with different liveries, they are equally slaves."

CHAP. XXXIV. Lord Eldon, Lord Kenyon, and Lord Redesdale,¹ were accustomed to "shake their heads at Murray," because he ventured to view questions of law scientifically, and, where he was not restricted by precedents, to deal out justice in a manner that would not have suggested itself to a mere formalist. Many passages might be selected from their judgments seeking to disparage him; but I shall content myself with the concentrated abuse of him by Lord Redesdale, when Chancellor of Ireland, in the case of *French v. Woolston*.²

Censure
of Lord
Mansfield
by Lord
Redesdale.

"Lord Mansfield had on his mind prejudices derived from his familiarity with the Scotch law, where law and equity are administered in the same courts, and where the distinction between them which subsists with us is not known; and there are many things in his decisions which show that his mind had received a tinge on that subject not quite consistent with the constitution of England and Ireland in the administration of justice. Lord Mansfield seems to have considered that it manifested liberality of sentiment to endeavor to give the courts of law the powers which are vested in equity; that it was the duty of a good judge *ampliare jurisdictionem*."³

1. John Freeman Mitford, Lord Redesdale, was born August 18, 1748, being a younger brother of William Mitford, the historian of Greece. After passing through Winchester School and New College, Oxford, he was called to the bar, became a distinguished Chancery pleader, and published, in 1787, a valuable work "On the Pleadings in Suits in the Court of Chancery, by English Bill," 2d edition 1804. He was first returned to parliament, 1788, through the interest of his cousin, the Duke of Northumberland, on a vacancy for Beeralston. He was appointed Solicitor General and knighted 1793, and became Attorney General 1799. Soon afterwards he was returned for East Looe, in Cornwall, and while representing that borough was chosen Speaker of the House of Commons 1801. In February, 1802, he was appointed Lord Chancellor of Ireland and raised to the peerage of Great Britain. He rendered himself very obnoxious to the Catholic party, for which reason he was removed from the Chancery bench by the Whig administration of 1806. From this period Lord Redesdale was regarded as a very high legal authority in appeals and committees of the House of Lords. Died January 16, 1830.—*Cooper's Biog. Dict.*

2. Scholes and Lefroy, 152.

3. "To extend jurisdiction."

For the first charge, by JUNIUS, there is not the slightest color or pretence. Lord Mansfield did not think (and no man qualified to form an opinion upon the subject can think) that the Common Law of England, as we find it in the old Text-books and Reports, was a perfect code adapted to the wants of a civilized and commercial nation. He did consider (as all qualified to form an opinion upon the subject must consider) the Roman Civil Law a splendid monument of human wisdom. But in no instance did he ever attempt to substitute the rules and maxims of the latter for those of the former where they are at variance. He made ample use of the compilation of Justinian,¹ and of the

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Vindica-
tion of
Lord
Mansfield.

1. Justinian I., emperor of Constantinople, was the son of a farmer, and of the sister of Justin, who from entering the army as a simple soldier, had become emperor, and was succeeded by his nephew, then in the forty-fifth year of his age, 527. Some months before the death of his uncle, Justinian had persuaded him to consent to his marriage with Theodora, a well-known actress and courtesan, who was declared Augusta, and crowned the same day as her husband. About the same time, Belisarius, the friend and future general of the new emperor, was married to Antonina, a professional companion of Theodora; and to the intrigues and jealousies stirred up by these two women is to be attributed the principal part of the untoward circumstances which have cast a stain on the personal character of Justinian. The political events of his reign may be summed up in the wars of Belisarius and the eunuch Narses, who obtained splendid successes over the Persians in the East, and the Vandals and Goths in Italy, and in the terrible sedition which broke out at Constantinople in 532, and was extinguished in the blood of thirty thousand persons. In the latter case, Justinian would have fled from his capital, and in all probability have lost his crown, but for the courage and talents of Theodora, whose vices were gilded by some of the rare qualities befitting an empress. The glory of his reign is the famous digest of the Roman law, known generally as the *Justinian Code*, which was compiled out of the Gregorian, Theodorian, and Hermogenian codes, by ten of the ablest lawyers of the empire, under the guiding genius of the jurisconsult, Tribonian. Their labors consist—1. of the "Statute Law," or Justinian code, properly so called; 2. the "Pandects," a digest of the decisions and opinions of former magistrates and lawyers,—these two compilations consisted of matter that lay scattered through more than two thousand volumes, now reduced to fifty; 3. the "Institutes," an abridgment, in four books, containing the substance of all the laws in an elementary form; 4. the laws of modern date,

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Lord
Mansfield's
supposed
preference
for the
Civil Law.

commentators upon it, but only for a supply of principles to guide him upon questions unsettled by prior decisions in England. He derived similar assistance from the law of nations, and from the modern continental codes. But while he grafted new shoots of great value on the barren branches of the Saxon juridical tree, he never injured its roots, and he allowed this vigorous stock to bear the native and racy fruits for which it had been justly renowned.

His sup-
posed
neglect
of estab-
lished
forms and
former
decisions.

There is more plausibility in the charge that he neglected former decisions too much for his own notions of justice and expediency,—forgetting that he sat on the bench *jus dicere, non jus dare*—to administer the existing law, not to legislate. He certainly was on several occasions led astray by a desire to make the rules laid down by his predecessors bend to the necessities of an altered state of the social system. For example, he held that an action might be maintained against a married woman, as if she were single, where she had property settled upon her separately and her husband was not liable for the debt;¹ and this heresy was afterwards condemned by more orthodox judges, who thought that human reason was not to be exercised in such a matter of faith.² But he rarely showed

including Justinian's own edicts, collected into one volume, and called the "New Code." These labors, which a Cæsar had not been able to accomplish, were completed by the year 541; and we can only lament that Christianity was not in its prime at that epoch, whereby the spirit of natural right and equity had been infused into them, in place of the dogmas of authority. Besides this important work of imperial reform, Justinian was a great builder and engineer, and works of public utility were kept constantly in progress in all parts of the empire. He was remarkable for temperance and chastity, and not less so for his great learning and diligent application to business; but his religious bigotry, and his weakness in the hands of Theodora, marred all his good qualities. Died in the eighty-third year of his age, 565.—*Cycl. Univ. Biog.*

1. See *Ringsted v. Lady Lanesborough*, 3 Doug. 197; *Carbott v. Poelnitz*, 1 Term Rep. 5.

2. *Marshall v. Rutton*, 8 Term Rep. 545.

any exception to his systematic respect for established forms, and his leading object was, by their assistance, to get at justice. Thus, in *The King v. The Mayor of Carmarthen*, he gave full effect to a mere technical objection, but contrived a mode by which the merits of the case might nevertheless be inquired into, saying, "General rules are wisely established for attaining justice with ease, certainty, and despatch. But the great end of them being to do justice, the Court are to see that it be really attained. What I have suggested seems to be the true way to come at justice, and what we ought therefore to do; for the genuine test is 'boni judicis ampliari *justitiam*,' not *jurisdictionem*, as it has been often cited."¹ And here is the limit which he wisely laid down to the argument *ab inconvenienti*: "Arguments of convenience and inconvenience are always to be taken into consideration when we are not tied down by erroneous opinions, which have prevailed so far in practice that property would be shaken by any alteration of them."²

But the charge which has stuck to Lord Mansfield, and, being often reiterated, has to a certain degree damaged his authority in Westminster Hall, is, that, sitting in the Court of King's Bench, he neglected the boundary between legal and equitable jurisdiction. This is treated with levity by the uninitiated. "As a judge," says Lord Mahon, "several lawyers have objected to him that 'he introduced too much *equity* into his court,'—a reproach which, till they explain it, sounds like a satire on their own profession."³ It is easy to explain how this would be a reproach if well founded. By the fundamental constitution of our

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Lord
Mansfield's
supposed
confound-
ing of
legal and
equitable
jurisdic-
tion.

1. 1 Burr. 292.

2. *Burgess v. Wheat*, Sir W. Blackstone's Rep. 123, in the decision of which he assisted Lord Chancellor Northington.

3. History, iv. 53.

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juridical system, whether for good or for evil, there are two sorts of courts—courts of law and courts of equity—in which, on the same facts, a different decision is given respecting rights and liabilities,—with a view of obtaining ultimately a satisfactory distribution of justice. In the nature of things there is a distinction between the matters referred to the one set of courts and to the other ;—courts of law, for example, having cognizance where there are only two parties in whom is exclusively vested both the beneficial and the legal interest, — whereas courts of equity only can give adequate relief when there is a multiplicity of parties, and those in whom the legal right is vested are only trustees for others who ought to enjoy beneficially. The procedure by which suits between these different parties are conducted is by necessity essentially different, and to confound the rules by which they are to be conducted must produce confusion and mischief. Neither must Law be irregularly imported into a court of equity, nor Equity into a court of law. Had Lord Mansfield really attempted to make the Court of King's Bench a court of equity, drawing to its cognizance disputes which could not be properly adjusted by the machinery belonging to it, and attempting to enforce the performance of fiduciary obligations, I should have thought that he deserved all the censure which has been heaped upon him. But it will be found that he never sought, in one single instance, to exercise in a court of law jurisdiction which is not assigned by the constitution to a court of law, and for which a court of law is not fully competent. Equity practitioners, the mere creatures of habit, who think that our juridical proceedings, as they first beheld them, rest upon the eternal fitness of things, and are as unchangeable in their nature as the movements of the heavenly bodies, were shocked by seeing him save time and expense in

the conduct of an action on a policy of insurance, by requiring a disclosure of papers essential to the trial, and by granting a commission to examine witnesses abroad—thereby obviating the necessity for filing a bill in the Court of Chancery to effectuate the very same object.

But then he is accused of saying that “whatever is a good execution of a power in equity should be considered good in law.” This charge is untrue. There are certain cases in which the validity of the execution of a power, when the required form has not been strictly observed, depends upon circumstances which a court of equity alone has the means of investigating, as where the power is executed for a valuable consideration; and these he was always for leaving exclusively to a court of equity, considering the execution invalid at law. There is another class of cases where, although the required form has not been observed, the execution is held void at law, and uniformly valid in equity, without looking beyond the power and the deed executing it. As where tenant for life being authorized, under a marriage settlement, to limit the premises to his wife for her life by way of jointure, he grants a term for ninety-nine years, determinable on her life, Lord Hardwicke, in the Court of King’s Bench, held that the term was void, not being warranted by the words of the power; and Lord Talbot, in the Court of Chancery, without any other circumstance, held the term to be valid, and decreed the defendant to pay all the costs both at law and in equity. In such cases Lord Mansfield thought, very reasonably, that, an invariable rule being laid down, the execution of the power should be supported at law as well as in equity.¹

The remaining alleged instance of his confounding

1. Str. 992; Burr. 1147; 7 Term Rep. 480.

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law and equity, is a doctrine falsely imputed to him that in an action of ejectment the equitable estate shall prevail. This would, indeed, have been most mischievous, for nothing has tended more to the security of title in England than keeping distinct the legal and equitable estate in land; and the result of an action of ejectment must not depend upon *trusts*, which a jury would be unfit to decide or to comprehend. Lord Mansfield never thought for a moment that in ejectment there could be a recovery on an equitable title. He did declare "that he and many of the judges had resolved never to suffer a plaintiff in ejectment to be non-suited by a term outstanding in his own trustee, or a satisfied term set up by a mortgagor against a mortgagee; but that they would direct the jury to presume it surrendered." The true meaning of this resolution is that, where trustees ought to convey to the beneficial owner, it shall be left to the jury to presume that they have conveyed accordingly; and where the beneficial occupation of an estate induces the probability that there has been a conveyance of the legal estate to the person who is equitably entitled to it, a jury may be directed to presume a conveyance of the legal estate. Lord Mansfield justly complained of the absurdity of English conveyancing by which the creation of terms is used for the purpose of charging the land, and these terms are still supposed to continue when the purpose is served for which they were created; but he never for a moment countenanced the doctrine that in a court of law the legal title must not prevail.¹ Such are the "equitable doctrines of Lord Mansfield" which offended the pedants of Westminster Hall. He never even showed any predilection for the peculiar modes of proceeding in equity, and he used manfully to insist

1. See *Lade v. Halford*, Bull. N. P. 110; *Weakly v. Bucknell*, Cowp. 473; *Yeo v. Rogers*, 5 East 138 n.



EDMUND BURKE.

upon the maxim that "equity follows the law,"—as when he declared that equity had no right to support a lease granted by a mortgagor after the mortgage, or to treat commercial questions differently, or to put a different construction on an act of parliament.¹ What ever JUNIUS might assert, it is well known that Lord Mansfield, instead of preferring prætorian process, by which law and fact were to be decided by a single judge, sincerely praised the Common Law in so far as it separates law from fact, referring law to four judges, and fact to twelve jurymen; and that he himself often declared that he never passed his time more satisfactorily or agreeably than in trying mercantile causes by a special jury of merchants at Guildhall.²

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Lord
Mansfield's
real love for
common-
law modes
of proceed-
ing.

While libelled by JUNIUS and his followers, Lord Mansfield was justly complimented by BURKE,³ a phil-

1. See 2 Evans 404.

2. He had great influence with juries, and hardly ever "lost the verdict"; *i. e.* the jury almost invariably found the verdict according to his direction.

3. Edmund Burke (*b.* 1729, *d.* 1797), born in Dublin, was educated at Trinity College, and came to London to study at the Middle Temple in 1750. The study of law was not congenial to him; and he soon deserted it for literature. His first attempts in this field were made in 1756, and consisted of "A Vindication of Natural Society," which was intended as a satire on Bolingbroke's theory of the origin of society, and "A Philosophical Inquiry into the Origin of our Ideas on the Sublime and Beautiful," which was warmly praised by such judges as Lessing and Kant. In 1759 the first volume of the "Annual Register" was published, and contained a survey by Burke of the chief events of the year. In 1761 he accompanied "Single-speech" Hamilton, who was private secretary to Lord Halifax, to Ireland. The connection lasted four years, at the end of which time Burke threw up a pension which Hamilton had procured for him, and returned to England. In the same year Rockingham came into office and appointed Burke his secretary. In December, 1765, through the influence of Lord Verney, Burke was returned to parliament for Wendover, and lost no time in making himself known to the House by a speech on the American colonies, which won for him a compliment from Pitt. In 1769 he wrote his remarkable pamphlet, "Observations on the Present State of the Nation." Burke was always on the side of constitutional order and liberty on such questions as the right of a constituency to choose its own represent-

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osophic statesman deeply imbued with the scientific principles of jurisprudence, who, having been con-

ative, the freedom of the press, the legality of general warrants issued by parliament, and the relations of a colony to the mother country. In 1770 he published "Thoughts on the Present Discontents," which, though unsuccessful as a pamphlet, placed its author in the front rank of political philosophers. In 1772 he was offered the direction of a commission, which was to examine the details of every department in India; but loyalty to his party made him decline the offer. In April, 1774, he made one of the most celebrated of all his great speeches—that on American taxation. In November, 1774, he was invited to stand for Bristol, and represented that city for six years. In March, 1775, he moved his resolutions in favor of conciliation with America; he urged the government to recognize the old constitutional maxim that taxation without representation is illegal, to return to the old custom of accepting what grants the general assemblies of the colonies should freely contribute, and above all things not to enter upon civil war. Two years later Burke addressed a letter to the sheriffs of Bristol, in which, in the clearest and most independent way, he explained to his constituents the principles which had guided him in his policy towards the colonies. In February, 1780, he brought in his resolutions for the amendment of the administration. His first project was directed against the corruption of parliament and the sources of that corruption, and was contained in a plan for the better security of the independence of parliament, and the economical reformation of the civil and other establishments. In the same year Burke retired from the representation of Bristol, finding that his independence was distasteful to the electors. Lord Rockingham's influence, however, obtained for him the seat of Malton in Yorkshire; and on that nobleman succeeding Lord North in 1782, he accepted the Paymastership of the Forces. On the death of Lord Rockingham in July, his ministry became divided against itself; Lord Shelburne succeeded to the Premiership; and Burke, Fox, and Sheridan resigned. The combination against him proved too strong for Shelburne, and in April, 1783, he made way for a coalition ministry under the nominal lead of the Duke of Portland. Burke returned to the Pay Office, and immediately committed a grave indiscretion in restoring two clerks who had been suspended for malversation. The most important act of this administration was the introduction of Fox's India Bill, which seems to have been devised and drawn by Burke. Burke and Fox advocated the measure with all their energy and power; but the king saw his opportunity of getting rid of a ministry which he disliked, and successfully used his influence to have the Bill thrown out by the Peers. This success he followed up by dismissing the ministry and sending for Pitt, who, in January, 1784, became Prime Minister. The India Bill, which Pitt introduced, was a compromise, of much narrower scope than Fox's Bill, and seems to have escaped any violent attack from Burke. He, however, vigorously attacked Pitt's Irish policy,

stantly opposed to him in politics, could have viewed his judicial career with no favorable prepossessions, but

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as well as the commercial treaty with France. A more glorious field for the exercise of his powers was now opened for Burke in the prosecution of Warren Hastings. In April, 1786, Burke, in answer to a challenge from Hastings's friends, laid before parliament his charges. The first charge was thrown out; the second and third were supported by Pitt and carried by so large a majority that in May, 1787, Burke brought forward a resolution to impeach Hastings. The management of the prosecution was entrusted by the Commons to Burke, Fox, Sheridan, Windham, and Grey. The trial began in February, 1788, and was opened by Burke in a speech peculiarly impassioned and persuasive. Seven years went by before the Lords brought in their verdict of acquittal. In the same year which saw the impeachment of Warren Hastings, politics were thrown into confusion by the illness of the king. Pitt's Regency Bill was vehemently attacked by the opposition, and by no member of it more bitterly than by Burke. The king's unexpected recovery, however, rendered all the preparations of the opposition unnecessary, and gave Pitt a further lease of office. In the following year the outbreak of the French Revolution was the beginning of the last act in Burke's career. For the remainder of his life his thoughts continued to be centred on France. His passionate love of order and reverence for the past prevented him from ever sharing in the generous enthusiasm which the earlier efforts of the French people awakened in Fox, Wordsworth, and Coleridge. He distrusted the Parisians, and foresaw too surely that the popular outbreak would end in something very different from liberty. It was not, however, till February, 1790, that Burke, in the House of Commons, openly avowed his horror of the principles that were being worked out in Paris. His avowal was couched in such terms that it occasioned a breach of his long-standing friendship with Fox. In the next month the breach had so far widened that Burke deserted Fox on a motion for the repeal of the Test and Corporation Acts which he himself had suggested. At length, in November, appeared the "Reflections on the French Revolution." Its success was wonderful, and it did much to alienate the majority of Englishmen from all sympathy with the Revolution. In the course of the next year Burke finally renounced his connection with Fox. In August he published his "Appeal from the New to the Old Whigs." He continued in parliament to storm against the murderous atheists in France and their advocates on this side of the Channel. In 1794 he lost his brother and his only son, and he never recovered from the blow. In the same year he retired from parliament, but he still watched France with the same unmitigated apprehension. He found time, nevertheless, to give to the world his sound views on the corn trade in his "Thoughts and Details on Scarcity." In 1796 he wrote his "Letter to a Noble Lord"—a scathing answer to some objections raised by the Duke of Bedford to the pension which Pitt had generously bestowed. In the

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having quoted his argument at the bar to show that a Hindoo should be admitted as a witness, when sworn according to the ceremonies of the Hindoo religion, thus proceeds :

"The sentiments of Murray, the Solicitor General, are of no small weight in themselves, and they are authority by being judicially adopted. His ideas go to the growing melioration of the law by making its liberality keep pace with the demands of justice and the actual concerns of the world,—not restricting the infinitely diversified occasions of men, and the rules of natural justice, within artificial circumscriptions, but conforming our jurisprudence to the growth of our commerce and of our empire. This enlargement of our concerns he appears, in the year 1744,¹ almost to have foreseen ; and he lived to behold it."

Lord
Mansfield
as a Criminal
Judge.

To complete my general sketch of Lord Mansfield on the bench, I ought here to notice him as a Criminal Judge—although I shall afterwards have to give some details of state trials at which he presided. Sitting in the Crown Court he was, if possible, more remarkable for calmness, courtesy, and dignity. There was no

same year appeared the first two "Letters on a Regicide Peace," brilliant specimens of Burke's most gorgeous rhetoric, in which he protested against any peace with the national government of France. His work, however, was ended, and he died at Beaconsfield on the 9th of July, 1797. It is impossible within our limits to give any adequate estimate of Burke's character and genius. We may perhaps be permitted to quote the words of a competent critic (Mr. John Morley) : "There have been more important statesmen, for he was never tried by a position of supreme responsibility. There have been many more effective orators, for lack of imaginative suppleness prevented him from penetrating to the inner mind of his hearers. . . . There have been many subtler, more original, and more systematic thinkers about the conditions of the social union. But no one that ever lived used the general ideas of the thinker more successfully to judge the particular problems of the statesman. No one has ever come so close to the details of practical politics, and at the same time remembered that these can only be understood and only dealt with by the aid of the broad conceptions of political philosophy."—*Dict. of Eng. Hist.*

1. The year in which *Omichund v. Barker* was argued and determined, 1 Atkyns, p. 40, 42.

complaint of any improper convictions before him, but he did not allow the guilty much chance of escaping, and, for the sake of example, he was somewhat severe in the punishments he inflicted. In cases of forgery he was always for carrying the capital sentence into execution. Attending the Council when the *Perreaus* had been found guilty, he strongly concurred in rejecting the powerful intercession for mercy; and the fate of Dr. Dodd¹ was afterwards ascribed to the pointed an-

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1. William Dodd, an English clergyman, born at Bourne, Lincolnshire, in May, 1729, executed in London, June 27, 1777. He studied at the University of Cambridge. In 1750 he went to London, and the next year married a woman who possessed neither virtue nor fortune, and whose tastes were even more extravagant than his own. He was ordained deacon the same year, and priest in 1753, and was appointed to the vicarage of West Ham, near London, where he obtained great success by his impressive eloquence. In 1763 he was entrusted with the care of the education of Phillip Stanhope, afterwards Earl of Chesterfield, and obtained an appointment as one of the chaplains of the King. Pursued by his creditors, and ambitious of a still higher position than he had yet obtained, he wrote to the wife of the Lord Chancellor Apsley an anonymous letter, offering her 3000*l.* if by her influence he might be promoted to the rectory of St. George's, Hanover Square. This letter, being communicated to the Chancellor, laid before the King, and traced to the author, caused his name to be stricken from the list of the royal chaplains. He fled to Geneva, where the young Lord Chesterfield was then residing, who gave him money to satisfy his creditors, and presented to him a living in Buckinghamshire. But Dodd went directly with his money to France, where he spent it recklessly. On his return to England in 1776 he resumed his pastoral functions, and preached with fluency and unction. His last sermon was at the Magdalen chapel, Feb. 2, 1777. Two days after this, he forged a bond upon Lord Chesterfield for 4200*l.*, for which he was tried at the Old Bailey and condemned to death. Though he refunded the money, and was recommended by the jury to the royal clemency, and though numerous noble protectors, many clergymen, and a petition from the city of London bearing 23,000 signatures, prayed for the interference of the crown, he was executed at Tyburn.—*Appl. Encyc.* vol. vi. p. 173.

The following extract from Boswell's "Life of Johnson" shows Dr. Johnson's connection with Dr. Dodd's cause:

"And here is a proper place to give an account of Johnson's humane and zealous interference in behalf of the Rev. Dr. William Dodd, formerly Prebendary of Brecon, and chaplain in ordinary to his Majesty; celebrated as a very popular preacher, an encourager of charitable institutions, and author of a variety of works, chiefly

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swer which he gave when the King asked whether, on account of the convict being a clergyman, his life might not be spared,—“If Dr. Dodd does not suffer the sentence of the law, the Perreaus have been murdered.”¹ This feeling proceeded by no means from any cruelty in his nature, but from the opinion then and long after very generally entertained by reflecting men, as well as by the multitude, that it was indispensably necessary,

theological. Having unhappily contracted expensive habits of living, partly occasioned by licentiousness of manners, he in an evil hour, when pressed by want of money, and dreading an exposure of his circumstances, forged a bond of which he attempted to avail himself to support his credit, flattering himself with hopes that he might be able to repay its amount without being detected. The person, whose name he thus rashly and criminally presumed to falsify, was the Earl of Chesterfield, to whom he had been tutor, and who, he perhaps, in the warmth of his feelings, flattered himself could have generously paid the money in case of an alarm being taken, rather than suffer him to fall a victim to the dreadful consequences of violating the law against forgery, the most dangerous crime in a commercial country; but the unfortunate divine had the mortification to find that he was mistaken. His noble pupil appeared against him, and he was capitally convicted.

“Johnson told me that Dr. Dodd was very little acquainted with him, having been but once in his company, many years previous to this period (which was precisely the state of my own acquaintance with Dodd); but in his distress he bethought himself of Johnson’s persuasive power of writing, if haply it might avail to obtain for him the Royal Mercy. He did not apply to him directly, but, extraordinary as it may seem, through the late Countess of Harrington (Caroline, eldest daughter of Charles Fitzroy, Duke of Grafton, and wife of William, the second Earl of Harrington), who wrote a letter to Johnson, asking him to employ his pen in favor of Dodd. Mr. Allen, the printer, who was Johnson’s landlord and next neighbor in Bolt-court, and for whom he had much kindness, was one of Dodd’s friends, of whom, to the credit of humanity be it recorded, that he had many who did not desert him, even after his infringement of the law had reduced him to the state of a man under sentence of death. Mr. Allen told me that he carried Lady Harrington’s letter to Johnson, that Johnson read it walking up and down his chamber, and seemed much agitated, after which he said, “I will do what I can”;—and certainly he did make extraordinary exertions.”

The Life then continues with an enumeration of the petitions and other papers which Johnson wrote for Dodd, among which was a letter to Lord Mansfield.

1. Holl. 148, 149.

for our commercial credit, to visit forgery with death in every instance.¹ That he was not in advance of the age in which he lived, justifies regret but not censure.

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Before resuming my narrative, I have only to mention that for thirty years Lord Mansfield took the principal part in disposing of Scotch appeals in the House of Lords. For this task he was peculiarly well qualified by the familiar knowledge of Scotch law, in which a succession of Chancellors—Northington, Camden, and Bathurst—were utterly deficient. At the hearing of these cases he often sat as Speaker on the woolsack, and they were always disposed of according to his opinion. He was bold alike in his decision of feudal and of commercial cases; and he set the Scotch judges right in the construction of their own law, as well as of that which he was in the daily habit of administering. He was particularly obliged to restrain their devoted love of *perpetuities*, which English lawyers are trained to hate; and in the great *Duntreath Case* he reversed the unanimous judgment of the fifteen Lords of Session in favor of a defective entail, and thereby struck off the fetters of half the entailed estates in Scotland. At first there was deep grumbling against this decision in the Parliament House at Edinburgh; but it was afterwards allowed, even there, to have proceeded on sound feudal principles.

Lord
Mansfield's
merits in
deciding
Scotch
appeals in
the House
of Lords.

Although, generally speaking, no lay lord interfered in the consideration of any Scotch appeals, the Douglas cause agitated all the members of the House, and was a subject of intrigue and canvass as much as a motion

The
Douglas
cause; ex-
planation
of Lord
Mansfield's
bad speech
upon it.

1. I myself once heard a judge, at Stafford, thus conclude an address to a prisoner convicted of uttering a forged one-pound note, after having pointed out to him the enormity of the offence, and exhorted him to prepare for another world: "And I trust that, through the merits and mediation of Our Blessed Redeemer, you may there experience that mercy which a due regard to the credit of the paper currency of the country forbids you to hope for here."

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for an address of want of confidence to turn out a minister. Lord Mansfield, I think, took the right side in holding the claimant to be the true son of Lady Jane Douglas, not of the Paris rope-dancer ; but his speech, as reported, is very inferior to his usual juridical efforts. This may be accounted for from the audience he addressed, who were more likely to be influenced by an appeal to their feelings and their prejudices than by a sound exposition of the principles of law involved in the case, and a masterly analysis of the evidence.¹

From this sketch, however imperfect, of Lord Mansfield as a Judge, I think it must be admitted that he was one of the greatest who has ever appeared ; and that, while he impartially dealt out justice to the litigants who appeared before him,—by the enlightened principles which he laid down and the wise rules which he established he materially improved the jurisprudence of his country. This is surely fame little inferior to that of winning battles or making discoveries in science.²

I must now follow his political career, which was more checkered, and on which opinions are much more divided.

1. The chief argument he relied upon was, that Lady Jane Douglas, being of such illustrious descent, could not possibly have committed the fraud imputed to her. See "Lives of the Chancellors," v. 290.

2. I again apologize for introducing so many law cases into a memoir intended for general circulation ; but it should be recollected that the selection is made from many volumes of Reports, extending over a period of above thirty years.

CHAPTER XXXV.

CONTINUATION OF THE LIFE OF LORD MANSFIELD
FROM HIS BEING MADE CHIEF JUSTICE TILL THE
ACCESSION OF GEORGE III.

LORD MANSFIELD had hardly been inaugurated as Chief Justice of the King's Bench when he was offered the higher dignity of Lord Chancellor. Lord Hardwicke, notwithstanding the efforts made to retain him, had insisted on resigning along with the Duke of Newcastle; and the new Ministers were much at a loss for a successor to him, there being no lawyer connected with them whom they could put forward in such a conspicuous position. It seems strange to us that they should have thought of the Attorney General of the Government they had overturned; but we must remember that, in the reign of George II., all political men who were candidates for office were *Whigs* alike, professing nearly the same political principles, and separated only by personal associations and enmities; so that, if considerations of private honor permitted, a politician took what course he chose, without incurring obloquy. The crime of *ratting* from one great party to another was then unknown. As the ties that had united Lord Mansfield with the Duke of Newcastle and Lord Hardwicke were understood to be dissolved, he might, without loss of character, have taken office with Pitt under the nominal headship of the Duke of Devonshire. But he at once rejected the proposal.

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Nov. 1756.
Offer to
Lord
Mansfield
of the great
seal.

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He easily foresaw that the present Government, which had neither court favor, nor parliamentary strength, nor popularity, must soon fall to pieces; and he was swayed by nobler considerations than the imprudence of exchanging an office which he held during life for one the tenure of which would be so precarious,—for all the glory to be acquired by perfecting our system of equitable jurisprudence had been already reaped, and he was just entering upon the untried undertaking of adapting the administration of justice in our common-law courts to the new circumstances of the country. The great seal was therefore given in commission to Lord Chief Justice Willes, Mr. Justice Wilmot, and Mr. Baron Smyth.¹

1. Walp. Mem. Geo. II. 106, 107.

Sidney Stafford Smythe. In the reign of Queen Elizabeth, Thomas Smythe, commonly called Customer Smythe, from his being Farmer of the Customs, first settled himself at Westenhanger's, in Kent. His eldest son, Sir John, was Lord Strangford's ancestor; and of his second son, Sir Thomas, to whom were devised the estates of Bounds near Tunbridge and Sutton at Hone, the chief baron Sir Sidney Stafford Smythe was the lineal representative. Sir Thomas's grandson, Robert, married Waller's Sacharissa, the daughter of Robert, Earl of Leicester, and widow of Henry, the first Earl of Sunderland; and their son, also Robert, was Governor of Dover Castle in the reign of Charles II. His son, Henry Smythe of Bounds, by his marriage with Elizabeth, daughter of Dr. John Lloyd, Canon of Windsor, was the father of the chief baron, an only child; and, dying in 1706, his widow made a second marriage with William Hunt, Esq. Young Smythe was an infant at his father's death; and being destined for the law, was admitted to the Inner Temple in June, 1724, and called to the bar in February, 1728. He travelled the home circuit, and in 1740 was made steward and one of the judges of the Palace Court at Westminster. In June, 1747, he received the honor of a silk gown, and as a king's counsel he was engaged for the Crown in 1749 in the special commission in Sussex for the trial of a band of smugglers for the heinous murder of a tide-waiter and another man who was a witness in a transaction in which they were concerned. He was returned as member for East Grinstead to the parliament of 1747, and between its second and third sessions was promoted to the bench, succeeding Mr. Baron Charles Clarke in his seat in the Exchequer in June, 1750, being soon after knighted. He sat as a puisne baron for more than two-and-twenty years, during which period he was twice appointed a Commissioner of the Great

On the meeting of parliament Lord Mansfield took his seat in the House of Lords,¹ where he was destined fully to support the reputation he had acquired as an able debater. There is only one volume of the Parliamentary History for twelve years, from 1753 to 1765, so that we have very few specimens of his oratory; but we know from contemporary memoirs that, not confining himself to legal questions, he was in the habit

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Dec. 2,
1756.
Lord
Mansfield
takes his
seat in
the House
of Peers.

Seal. On the first occasion he held it for eight months, from November 9, 1756, to June 30, 1757, on the resignation of Lord Chancellor Hardwicke; and on the second, when he was principal Commissioner, for more than a year, from January 21, 1770, to January 28, 1771, upon the death of Lord Chancellor Charles Yorke. These appointments manifest that he held that high reputation as a judge that secured him an advance to the higher dignity of this court as soon as a vacancy occurred. This did not happen till the resignation of Sir Thomas Parker, who had filled the place of lord chief baron for upwards of thirty years. Sir Sidney succeeded him on October 28, 1772, and presided in the Exchequer for the next five years. His infirmities then obliged him to resign in December, 1777, after a judicial life extending to a term nearly as long as that of his predecessor. He received a pension of 2400*l.* a year, and was immediately sworn of the Privy Council. He died in less than a year afterwards, on October 30, 1778; leaving no issue by his wife, Sarah, the daughter of Sir Charles Farnaby, Bart., of Kippington in Kent.—*Foss's Lives of the Judges.*

1. "Immediately after the King's Speech at the commencement of the session, 'the Speaker acquainted the House that there were some new created Lords without, ready to be introduced.' Whereupon, William Murray, Esq., Lord Chief Justice of His Majesty's Court of King's Bench, being, by letters patent dated the 8th day of November, in the 30th year of the reign of His present Majesty, created Lord Mansfield, Baron of Mansfield, in the County of Nottingham, was (in his robes) introduced between the Lord Willoughby, of Parham, and the Lord Edgumbe (also in their robes), the Gentleman Usher of the Black Rod, Garter King at Arms, and the Lord Great Chamberlain of England, preceding.

"His Lordship, on his knee, presented his Patent to the Speaker at the wool-sack, who delivered it to the Clerk; and the same was read at the table.

"His Writ of Summons was also read, as follows:—'George the Second,' etc.

"Then his Lordship came to the table, and, having taken the oaths and made and subscribed the Declaration, and also taken and subscribed the Oath of Abjuration, pursuant to the statutes, was placed on the lower end of the Barons' bench."—29 *Journal*, p. 5.

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Lord
Mansfield's
maiden
speech
there.

of speaking with powerful effect upon subjects connected with the general government of the empire. His maiden speech was drawn forth by a rather ludicrous incident, which we should consider harmless, and treat with a laugh. As a "quiz" upon the Ministers,—on the day when parliament assembled there was printed and sold in the streets a spurious King's Speech, purporting to be "His Majesty's most gracious Speech to both Houses of Parliament." There being some talk of proceeding against the author, the King satirically observed, "I hope the man's punishment will be of the mildest sort, for I have read both speeches, and, as far as I understand them, the spurious speech is better than the one I delivered."¹ However, Lord Sandwich² brought the matter before the House

1. There had been serious differences about the speech between the King and Pitt, who had written it.

2. John, fourth Earl of Sandwich (1718-1792), early in life obtained public offices of importance. As plenipotentiary to the States-General, he signed in 1748 the preliminaries of the Treaty of Aix-la-Chapelle. He became First Lord of the Admiralty on his return to England, and became so intimately connected with the Bedford faction, that when Pelham wished in 1751 to rid himself of that faction, he began by the dismissal of Lord Sandwich. During the next twelve years, Lord Sandwich was out of office, and was much more congenially employed with the gay brotherhood of Medmenham, of which he was a conspicuous member. In 1763 he became First Lord of the Admiralty, and the same year was made one of the Secretaries of State as a colleague of Lord Halifax. In this post he signalized himself by his violent denunciation of Wilkes, of whom he had but lately been a boon companion. As the head of a department, he was in his proper sphere, for his industry, as Walpole says, was so remarkable, that the world mistook it for abilities. In 1765 he was guilty of using the meanest misrepresentation to the King in order to induce him to strike out the name of the Princess of Wales from the Regency Bill. The King was furiously indignant; and within two months dismissed the ministry. In 1767, when the Duke of Grafton made an alliance with the Bedford faction, Lord Sandwich "took over the salary and the patronage of the Post Office." He remained in that office until the Grafton ministry gave way to Lord North's administration, in which Sandwich returned to the Admiralty. He failed signally both in the general conduct of business and in reducing the revolted colonies. In April, 1779, Fox attacked

of Peers as a breach of privilege; and Lord Hardwicke, still taking the lead, having in a dictatorial way moved "that the delinquent parties should be imprisoned, and that the insolent document itself should be burnt in Palace Yard by the hands of the common hangman," Lord Mansfield agreed that such an insult to the Crown and the two Houses, if taken notice of, could not be passed over or dealt with more leniently than proposed by the noble and learned Lord, who had so long presided over their deliberations: although he might perhaps have done better by moving the previous question or an adjournment.¹

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Soon after, Lord Mansfield coöperated with Lord Hardwicke on a more worthy occasion, in rejecting the bill sent up from the Commons to authorize the officers who had sat on Admiral Byng's² court-martial to disclose the deliberations which had taken place among them before they found him *guilty* and sentenced him to be shot; but he was in no respect answerable for

him fiercely. Narrowly escaping a direct vote of censure, Sandwich fell with Lord North in 1782, and thenceforth lived in retirement, unrespected and unloved.—*Low and Pulling's Dict. of Eng. Hist.*

1. 15 Parl. Hist. 779; Walp. Mem. Geo. II. 109, 110; Waldegrave's Mem. 89.

2. John Byng, a British admiral, born in 1704, executed at Portsmouth, March 14, 1757. In 1756, Minorca being menaced by the French, Admiral Byng was appointed commander of a squadron consisting of ten ships of the line, with which he proceeded to its relief. After arriving in the Mediterranean, finding his equipments inadequate to the service required, he sailed for Gibraltar to get provisions and refit. He now learned that the French had succeeded in landing 19,000 men in Minorca, and had reduced nearly the whole of the island. Although a council of war pronounced against the attempt, Byng made an effort to establish communication with the garrison, which, after an indecisive engagement with the French fleet, proved unsuccessful. For his conduct on this occasion he was superseded, and on his return home was brought to a court-martial. After a long trial he was found guilty of cowardice in the presence of the enemy, and sentenced to be shot, but recommended to mercy. His general unpopularity and the rancor of his political enemies prevailed against this recommendation, and the sentence was carried into execution.—*Appl. Encyc.* vol. iii. p. 507.

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the atrocity of carrying into execution a sentence which was illegal on the face of it, as it acquitted the accused of cowardice and all bad motive, and was accompanied by an unanimous recommendation to mercy.¹

April 5,
1757.
Lord
Mansfield
Chancellor
of the
Exchequer.

Before many months had elapsed, the Ministry was dissolved; and, on the dismissal of Mr. Legge,² Lord Mansfield actually became Chancellor of the Exchequer. This was according to the ancient usage by which, on a vacancy of this office, the seals of it are delivered to the Chief Justice of the King's Bench for the time being, who does formal acts till a successor is appointed. Such a provisional arrangement had not previously lasted more than a few days; but Lord Mansfield continued nominally finance minister for three months, and speculations began to be formed how, being a peer, he was to open the Budget.

The whole of this interval was consumed by intrigues for the formation of a new Ministry, in which

1. 15 Parl. Hist. 803-822. Horace Walpole represents that, in opposing the bill, he indecorously entered into the merits of the case, trying to rouse indignation against the prisoner, and concluding with the observation,—“that there had been times when a sea-officer had blown up his ship rather than be taken or retreat”—(*Mem. Geo. II.* vol. ii. p. 174). But this is a palpable misrepresentation, proceeding from the writer's spite against the Duke of Newcastle, to whose influence he wishes to impute the execution of Byng. Lord Mansfield, at this time, was neither in, nor connected with, the Government, and could be under no bias against the side of mercy.

2. Henry Billson Legge (*b.* 1708, *d.* 1764) was the son of the Earl of Dartmouth. He became Lord of the Admiralty in 1746, and Lord of the Treasury in 1747. In the following year he was appointed envoy extraordinary to the court of Berlin, and in 1749 became Treasurer of the Navy. In 1754 he became Chancellor of the Exchequer, but in 1755 he rebelled against Newcastle, refusing to sign the Treasury warrants necessary for carrying the treaty for the Hessian subsidy to a conclusion. He was accordingly dismissed. He again assumed office as Secretary of State, in 1756, but was dismissed in the following year, to be shortly afterwards reinstated as Chancellor of the Exchequer; he was, however, dismissed in 1761, owing to a quarrel with Bute. He continued, until his death, to adhere to Pitt in politics, although bound by no ties of friendship.—*Dict. of Eng. Hist.*

he acted a very prominent part. To him it was chiefly owing that the reins of government were finally trusted to Pitt, his former rival; and that the war, which had hitherto been marked by defeat and disgrace, ended in conquest and glory. After long huckstering, the King had resolved that the terms on which alone Pitt would accept office should be rejected, and that Fox¹ should be at the head of affairs as Chancellor of the Exchequer. Lord Mansfield was summoned to deliver up to him the seals of the office, and we have

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for the
formation
of a new
Ministry.

1. Henry Fox, first Lord Holland (*b.* 1705, *d.* 1774), second son of Sir Stephen Fox, was a political disciple of Walpole. In 1743 he became one of the Commissioners of the Treasury, under the Pelham administration, and on Lord Granville's failure to form a ministry he was appointed Secretary for War. But dissensions sprang up among the ministry, and he violently opposed Lord Hardwicke's Marriage Act. On the death of Pelham, his brother, the Duke of Newcastle, attempted to form a government. It was difficult to find a leader of the Commons. Newcastle applied to Fox, as Pitt was disagreeable to the king. But they quarrelled about the disposal of patronage; and Robinson, a man of little influence, was made manager of the Commons. The next month, however, Newcastle secured Fox's services by making him Secretary of State, and removing Robinson. He soon quarrelled with his chief; and seeing that the blame for the loss of Minorca was to be cast on his shoulders, he resigned, in 1756, and was shortly followed by Newcastle. It was hoped that he and Pitt would unite, and form an administration; but his quarrel with Pitt, caused by his acceptance of office in 1754, was too serious. However, after the failure of Pitt's first administration, Fox accepted the subordinate position of Paymaster of the Forces, whereby he lost even a seat in the cabinet, but secured a large income. On the accession of George III., he joined Lord Bute in his attack on the Whigs, and deliberately set to work to buy a majority in the House. The Paymaster's office became a shop for the purchase of votes. It is said that 25,000*l.* was thus expended in one morning. But the whole feeling of the Commons was against him, and his colleagues refused to support him. Hints of bribery were freely thrown out, and he became thoroughly unpopular. "He had always been regarded as a Whig of the Whigs." On the sudden resignation of Bute, he retired to the House of Lords as Lord Holland. He continued to hold office for two more years, but he had ceased to play any part in politics. In 1767 he was not ashamed to solicit his old enemy, Chatham, for an earldom. Fox, though a very able man, was, in the opinion of some, a distinct failure as to his public career.—*Dict. of Eng. Hist.*

CHAP. this statement from Lord Waldegrave of what then
XXXV. occurred:

"On the morning of the 11th June, Lord Chief Justice Mansfield was ordered to be at Kensington.¹ The reason

I. Kensington Palace, as Nottingham House, was the residence of the Lord Chancellor Heneage Finch, Earl of Nottingham. His son sold it to William III. in 1690, when Evelyn describes it as "a patched-up building—but, with the gardens, a very neat villa." The king employed Wren to add a story to the old house, which forms the north front of the existing palace, and to build the present south front. The improvement of Kensington became his passion, and while he was absent in Ireland Queen Mary's letters to her irascible spouse are full of the progress of his works there, and of abject apologies because she could not prevent chimneys smoking and rooms smelling of paint. Immediately after the king's return (Nov. 10, 1691) a great fire broke out in the palace, in which William and Mary, having narrowly escaped being burnt in their beds, fled into the garden, whence they watched their footguards as they passed buckets to extinguish the flames. When her new rooms were finished, Mary held the drawing-rooms there, at which her hostility to her sister Anne first became manifest to the world, the princess making "all the professions imaginable, to which the queen remained as insensible as a statue." After Mary's death William remained in seclusion and grief at Kensington, whither Anne came to condole with him, carried in her sedan chair (for she was close upon her confinement) into his very room,—the King's Writing-room, which is still preserved. There in 1696 William buckled the Order of the Garter with his own hands on the person of Anne's eldest child, the little Duke of Gloucester, and hither, after he had received his death-hurt by a fall from his sorrel pony at Hampton Court, he insisted upon returning to die, March 8, 1702. After William's death, Anne and Prince George of Denmark took possession of the royal apartments at Kensington. But the mother of seventeen children was already childless and she made her chief residence at St. James's, coming for the Easter recess to Kensington, where she planted "Queen Anne's Mount," and built in the gardens "Queen Anne's Banqueting Room," in which she gave fêtes which were attended by all the great world of London "in brocaded robes, hoops, fly-caps, and fans." The rooms on the north-west of the Palace were added by George II., and intended as a nursery for his children. He also died here (Oct. 25, 1760), suddenly, in his seventy-seventh year, falling upon the floor, just after he had taken his morning chocolate, and when he was preparing to walk in the garden. George III. did not occupy Kensington Palace himself, but as his family grew up its different apartments were assigned to them. Caroline, Princess of Wales, lived there, with her mother the Duchess of Brunswick, after her separation from her husband within a year after their marriage.

assigned was that he should deliver back the Exchequer seals, which had been in his possession from the time of Legge's resignation ; but the real business was of a different nature. The King discoursed with him a considerable time in the most confidential manner, and the conversation ended by giving Lord Mansfield full powers to negotiate with Pitt and the D. of Newcastle, his Majesty only insisting that Lord Temple should have no employment which required frequent attendance in the closet, and that Fox should be appointed Paymaster, which last demand did not proceed from any present partiality, but was the fulfilling of a former engagement. Before the final resolution was taken, his Majesty thought proper to take my advice. I told him I was clear in my opinion that our administration would be routed at the opening of the session ; for that the D. of Newcastle had a considerable majority in the House of Commons, whilst the popular cry without doors was violent in favor of Mr. Pitt."

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XXXV.

Lord Mansfield, on his return, wrote the following account of his interview to Lord Hardwicke, with whom he was now coöperating very cordially :

" Saturday, 4 o'clock.

" My Lord,—I am just come from Kensington, where I was by order to deliver the seal, & Mr. Fox was there to receive it. Upon my going into the closet, the King did me the honor to talk to me of the present melancholy situation, & bid me tell him what I thought. I did so very sincerely, & made a great impression. The result was, that I have brought the seal back, and am to speak to the D. of N. & y^e L^d. By good

In the south wing lived Augustus Frederick, Duke of Sussex, with his first wife, Lady Augusta Murray. He held his conversazione there as President of the Royal Society ; he collected there his magnificent library ; and there he died, April 21, 1843. His second wife, created Duchess of Inverness, continued to reside at Kensington till her death. Finally, in the south-eastern apartments of the palace, lived Edward, Duke of Kent, and his wife Victoria of Saxe Cobourg, and in them their only daughter VICTORIA was born, May 24, 1819, was christened, June 24, 1819, and continued to have her principal residence till her accession to the throne. Hither the Queen's first council was summoned.—*Hare's Walks in London*, vol. ii. p. 456.

CHAP. luck I met the D. of N. at Hyde Park¹ corner. I stopped
XXXV. L^d Rockingham's² resignation, which I never approved of ; he followed me home, & now tells me that he stopped the D. of Rutland.³ I am, at this moment, going to Guildhall, & give y^r L^p this trouble to know w^r I may wait upon your Lordship if I get back before $\frac{1}{2}$ an hour after 10.

"I beg your Lordship wou^d not take the trouble to write, but to send me word how late I may venture to come if y^r L^p is to be at home to-night.

"I have the honor to be,

"With the greatest respect,

"Y^r L^p's most obliged, hu. servant,

"MANSFIELD."

1. Hyde Park, the principal recreation ground of London, takes its name from the manor of Hyde, which belonged to the Abbey of Westminster. The first Park was enclosed by Henry VIII., and the French ambassador hunted there in 1550. In the time of Charles I. the Park was thrown open to the public, but it was sold under the Commonwealth, when Evelyn complained that "every coach was made to pay a shilling, and horse sixpence, by the sordid fellow who had purchas'd it of the State as they were cal'd." Cromwell was run away with here, as he was ostentatiously driving six horses which the Duke of Oldenburgh had given him, and as he was thrown from the box of his carriage, his pistol went off in his pocket, but without hurting him. Hyde Park has been much used of late years for radical meetings, and on Sundays numerous open-air congregations on the turf near the Marble Arch make the air resound with "revival" melodies, and recall the days of Wesley and Whitefield.—*Hare's Walks in London*, vol. ii. p. 105.

2. Charles Watson Wentworth, second Marquis of Rockingham, an English Whig statesman, was born in 1730. He succeeded to the marquisate in 1750, and inherited a large fortune, which, joined with an honorable character, rendered him a person of great influence. He became prime minister in July, 1765, and took Edmund Burke into his service as private secretary. The notorious Stamp Act was repealed by this ministry, which by the enmity of the king was driven from power in July, 1766. He opposed the measures by which Lord North provoked the American colonies to revolt. When North resigned (in March, 1782) the king was reduced to the painful necessity of accepting a Whig ministry, of which Lord Rockingham was premier. He died July 1, 1782, leaving no issue.—*Thomas's Biog. Dict.*

3. Charles Manners, Duke of Rutland (*b.* 1754, *d.* 1787), was appointed Viceroy of Ireland by Pitt in 1783. He found Ireland in a state bordering on open rebellion. His firmness, however, prevented a proposed congress from meeting (1784) ; and, though unable

In consequence, the negotiation was renewed ; and it was at last finally arranged that Fox, with the Paymastership, by which he might amass wealth, would give no further trouble ; that all jobbing patronage should be given to Newcastle ; and that all real power should be intrusted to Pitt.

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XXXV.
Lord
Chatham's
first gov-
ernment.

A serious difficulty arose with respect to the office of Chancellor, and it was again earnestly pressed on Lord Mansfield, whose reluctance it was hoped might be overcome by confidence in the stability of the new Government. But he had been much gratified by the applause which he had received as a Common Law Judge, and he resolved not to yield to another a post for which he felt that he was so highly qualified. After a sordid chaffering with several eminent lawyers about peerages, pensions, and reversions, the great seal was given to Sir Robert Henley as Lord Keeper, who waived all conditions as to peerage, pension, or reversion ;—the two distinguished law dignitaries who superintended the negotiation being well pleased that their empire in the Upper House was not to be invaded by any new competitor.

Lord
Mansfield
again
refuses the
great seal.

At last the new Administration was installed, and Lord Mansfield surrendered back to Mr. Legge the seals of Chancellor of the Exchequer. But, instead of returning, as he ought to have done, to the exclusive discharge of his judicial duties, he unhappily assumed the character of a political judge by becoming a member of the Cabinet.

June 30.

"Lord Mansfield," says Horace Walpole, "was called to the *conciliabulum*, or essence of the council ; an honor not only uncommon and due to his high abilities, but set off with his being proposed by Lord Hardwicke himself, who wished, he

He is a
member of
the cabinet.

to carry the commercial treaty, he put down the Whiteboy insurrection, and restored internal quiet. He was very popular, and was much lamented when he died.—*Dict. of Eng. Hist.*

CHAP. said, to get repose for three months in the country : Lord
XXXV. Mansfield would supply his place. It was about this time that this great Chief Justice set himself to take information against libels, and would sift, he said, what was the real liberty of the press. The occasions of the times had called him off from principles that favored an arbitrary king—he still leaned towards an arbitrary government.”¹

All parties in the state being united, no opposition was made to an arrangement by which a Criminal Judge was to direct that prosecutions for treason and sedition, afterwards to come before him as judge, should be instituted, and was to preside at trials where the question would be “whether a publication was libellous, or a just animadversion on the misdeeds of himself and his colleagues?” The administration of justice under such circumstances might be pure, but could not be free from suspicion; and the objection was obvious, that remarks upon the licentiousness of the press could not be made with proper freedom and effect by a judge who, although only performing his strict duty as an expounder of the law, might be denounced as a partisan trying to screen the imbecility or wickedness of the Government. It is a remarkable circumstance that the distinguished memoir-writer whom I have quoted, states, without any malice or satire, how Lord Mansfield henceforth began to yield to the arbitrary principles which he entertained, and meditated the measures against the press by which he afterwards incurred so much obloquy. Although this arrangement was cited as a precedent when Lord Chief Justice Ellenborough was introduced into the Cabinet by a Whig Government in the year 1806, I must express a clear opinion that it was unconstitutional, and a strong hope that it will never be again attempted.²

1. Walp Mem. Geo. II. vol. ii. pp. 265, 266.

2. See Lives of the Chancellors, vol. vi. ch. clxxxv.



LORD CHATHAM.

In the division of the spoil upon this occasion the patronage of Scotland was assigned to Lord Mansfield.¹ CHAP.
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1. The following is a letter from him, politely refusing the office of Lord President of the Court of Session to Lord Prestongrange, who, when Lord Advocate, had retired as a Puisne Judge :

" London, 13th March, 1760.

" My dear Lord,—I had yesterday the favor of yours, and am much obliged to you for doing me the justice to believe that I am very sincerely your friend and serv^t. I have seen no body of consequence as to the subject-matter of y^r letter since I rec^d it. Your pretensions are extremely well founded before you accepted a seat upon the bench ; and since, I do assure you, report has been as favorable to you here as you cou'd desire. I think you can have no competitor except the Advocate ; and I rather believe that he will have it, if he insists.

" I am, with the greatest truth and regard,

" Y^r most aff: hu: serv^t,

" MANSFIELD."

Lord Mansfield, when at the bar, had written the same individual the following letter of congratulation on his becoming Lord Prestongrange:

" Lincoln's Inn, 8th Au: 1754.

" My dear Lord,—I am ashamed I have not thanked you before for your very flattering and obliging letter. As it is agreeable to you to succeed Lord Elchies, I wish you joy with all my heart. It is very happy for the people to have such offices so filled; tho' I can't help lamenting that we shall be deprived of the pleasure of y^r company here, and the great benefit of y^r assistance in the King's service. I beg my compliments to Mrs. Grant; and hope you do me the justice to believe me,

" My dear Lord,

" Y^r most aff: & ob: hu: serv^t,

" W. MURRAY."

Lord Prestongrange afterwards applied for the office of Lord Justice Clerk, and received the following rebuff, showing the writer to be tired of his importunity:

" Kenwood, 7th April, 1763.

" My dear Lord,—I am sorry for the J. Clerk, tho' he has lived to so great an age. By y^r letter, which I have this moment received, I suppose he is no more. I certainly shall not be consulted upon the choice of his successor. Common report has long said that it was fixed. If I had any power, I would not fail to do justice to your pretensions, because I am, and have long been, with great truth,

" Your most aff: hu: serv^t,

" MANSFIELD."

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Debating now went out of fashion, and for a whole session together there would not be a single division in either House. It might have been thought that, to gain notoriety, or to please constituents, or to gratify malice, some adventurous members would occasionally have opposed the measures of Government however wise and successful, and brought forward motions however small the minority to divide in favor of them; but all persons, in and out of parliament, seem to have been intoxicated by the successes of the war,¹—bells rang, and bonfires blazed, and nothing was listened to except praises of the genius of Pitt in planning conquests and the heroic bravery of Wolfe² in achieving

1. The Seven Years' War (1756-1763) was caused by the alarm entertained by the Continental powers of Europe at the aggressive designs of Frederick the Great, and by the desire of Maria Theresa to recover the province of Silesia from the King of Prussia. Austria was readily joined by Louis XV. of France, the Czarina Elizabeth, and the King of Poland, who was also Elector of Saxony; while Frederick obtained promises of assistance from England—which was nervously afraid of isolation, and was already at war with France in the colonies—besides some money, and an army in Hanover. Throughout the Continental war, however, the British troops played a secondary part. . . . Berlin was occupied by the Russians in October, and though, by the brilliant victory of Liegnitz in August, Silesia had been partially recovered, they came up again in November, and the fearful battle of Torgau only just saved Russia from destruction. It was followed by the retirement of the allies on all sides. Soon after the death of George II. all subsidies from England ceased, and so exhausted were both sides, that no operations of particular moment were undertaken. On the Rhine, Ferdinand of Brunswick and the French alternately advanced and retreated, and the Russians and Austrians were unable to crush Frederick's remnant of an army, owing to the desolation of the country. A double series of negotiations had already begun, those between England and France and those between Russia and Austria on the one side, and Prussia on the other. The former, in spite of the opposition of Pitt and the outbreak of the war with Spain, ripened into the Treaty of Paris (q.v.) of 1763.—*Dict. of Eng. Hist.*

2. General James Wolfe was born in Westerham in Kent, A.D. 1726. His father was a general, and young Wolfe entered the army at a very early age. He was honorably distinguished in the battles of Dettingen and Fontenoy; and at the subsequent battle of Laffeldt in 1747, he attracted the special notice of his commander, the Duke of Cumberland, who ever afterwards zealously aided in Wolfe's promo-

tion and advancement. He was not more eminent for personal bravery and coolness in action, than for his success in disciplining his men, while at the same time he won the heart of every soldier that served under him. When our great minister, the elder Pitt, undertook in 1757 to raise England from the temporary degradation into which she had then fallen, and to smite down the House of Bourbon in every quarter of the globe, he discerned the genius of Wolfe: and, wisely disregarding the conventional claims of seniority, Pitt entrusted to the young officer the highest duties in the conquest of French America. Wolfe, in conjunction with Amherst, led the force which besieged and captured Louisburg in July, 1758, an achievement which gave us Cape Breton and Prince Edward's Island. In 1759 Pitt conferred on Wolfe the still more important command of the expedition against Canada, which was to advance up the St. Lawrence and attack Quebec from the west, while the other British commander in North America was to coöperate by assailing the French possessions from the opposite direction. Wolfe reached the Isle of Orleans in the St. Lawrence on the 26th of June, with a force of 8000 excellent troops, and with a fleet of twenty-two sail of the line under Admiral Saunders. Montcalm, the French governor of Canada, had concentrated all the military strength of the province in Quebec; and, though he was inferior to Wolfe in the number of regular troops, the zeal of the numerous French provincials who fought under him, the strength of his position, and the skill with which he fortified and watched each approach to Quebec, made Wolfe's enterprise appear almost hopeless. The English commander who invaded Canada from the other direction, and who ought to have invested Quebec from the upper side, loitered on his march; and for two months Wolfe and his force lay below the city, unable to strike any effective blow, and taught by a severe repulse which they sustained on the 31st of July with how strong and vigilant an adversary they had to cope. Wolfe's health was shattered by anxiety and fever; but he spared neither mind nor body; and at length he himself discovered the cove above the town which now bears his name, and the narrow winding path that leads from it up the cliff to the heights of Abraham, a plateau to the west of Quebec, where the city's fortifications were feeblest. He succeeded in the night of the 12th of September in leading 5000 of his men up this path, and in surprising the post of Canadians by whom the summit was guarded. On the next morning Montcalm led his troops out to meet him, and the battle was fought which determined the ascendancy of the Anglo-Saxon race and language over the French in the New World. Both Wolfe and Montcalm fell. Wolfe was twice struck as he led on a bayonet charge which decided the day; and when the French were already broken, he received a third bullet, which was fatal, in the heart. He lived just long enough to know that the victory was complete; and the last words of the young conqueror were—'Now, God be praised, I die happy.' Wolfe was as exemplary in private life, as he was eminent in the discharge of public duty, and his name is one of the purest as well as the brightest in the long list of England's military heroes.—*Cyclo. of Univ. Biog.*

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them. In our parliamentary annals, from the accession of James I. to the present time, there is nothing to be found approaching the unanimity and tranquillity which marked the last years of the reign of George II.¹

He throws
out the
*Habeas
Corpus*
amend-
ment bill.

In this interval Lord Mansfield, although always ready as a champion of the Ministers, had no occasion to defend them—and he spoke once, and once only, on a subject unconnected with party. A very useful bill had come up from the Commons, introduced by Mr. Pratt (afterwards Lord Camden), to improve, the *Habeas Corpus* Act, by extending it to cases where parties were deprived of their liberty without any criminal charge being alleged against them. Blackstone's Commentaries, lately published, had taught the doctrine that the penal code of England, as it then existed, although we consider it to have been very defective as well as very bloody, was an absolute piece of perfection, and for more than half a century afterwards any one who proposed to amend it was denounced as disaffected or visionary. I am concerned to say that Lord Mansfield, from whom better things might have been expected, stirred up a furious opposition to this bill, and threw it out.² According to a report of his speech by Dr. Birch, he said "that people supported it from the groundless imagination that liberty was concerned in it, whereas it had as little to do with liberty as the Navigation Laws or the act for encouraging the cultivation of madder; that ignorance on subjects of this nature was extremely pardonable, since the knowledge of particular laws required a particular study of them; that the greatest genius, without such study, could no more become master of them than of Japanese literature without understanding the language of the coun-

1. George (Augustus) II. was born 1683; succeeded his father George I., 1727; died Oct. 25, 1760.

2. June 4, 1758.

try ; and that the writ of *habeas corpus* at common law was a sufficient remedy against all those abuses which this bill was supposed to rectify."¹ However, in a more enlightened age the bill was again introduced and received unanimous support in both Houses of Parliament.³

Lord Mansfield was now called upon for the first time to preside at a state trial; and as the case was clear, and popular feeling ran with the prosecution, he passed through it without censure, although in reality he was both prosecutor and judge. Dr. Hensey, a physician, had, since the commencement of the war, been in the pay of the French as a spy, receiving from them an allowance of 100*l.* a year. Our Government intercepted his letters, arrested him, seized his papers, and indicted him for high treason. His trial came on at the bar of the King's Bench before Lord Mansfield and the other judges of that court.

The evidence was entirely documentary, consisting of letters written to the prisoner from agents of the French Government, which were found in his bureau,—and letters written by him to these agents, which were intercepted in the General Post Office in London,—showing that he was in the habit of giving information to the enemy of the sailing of our fleets, and that in telling them of our projected expedition against Rochfort he advised them to prevent it by invading Eng-

1. 15 Parl. Hist. 900. Horace Walpole says,—“ He spoke for two hours and a half. His voice and manner, composed of harmonious solemnity, were the least graces of his speech. I am not averse to own, that I never heard so much argument, so much sense, so much oratory, united. His deviation into the abstruse minutiae of the law served but as a foil to the luminous parts of the oration. Perhaps it was the only speech which, in my time, had real effect,—that is, convinced many persons ; nor did I ever know how true a votary I was to liberty till I found I was not one of the number staggered by that speech.”—*Mem. Geo. II.* ii. 301.

2. 56 Geo. III. c. 100.

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XXXV. land. His counsel strongly objected that the papers found in his bureau, not being written by him, and possibly being disapproved of by him, were no evidence against him; and that the letters in evidence which he had written did not amount to an overt act of treason any more than if they had remained in his bureau, as they were still in London when they came into the possession of the English Government:

"But Lord Mansfield said, that the papers found in the prisoner's bureau were clearly admissible evidence; it would be for the jury to say what weight was to be attached to them, and to consider how far the prisoner had repudiated them or acted upon them. The sending off by the post a letter communicating intelligence to the enemy in time of war, he held to be a clear overt act of high treason, although it never reached its destination, the crime charged in the indictment being the compassing of the King's death, which, according to all the authorities, was proved by writing and sending off a letter conveying intelligence to the King's enemies, whether or not it reached its destination."

The other judges concurring, the prisoner was found *guilty*, and the Chief Justice pronounced sentence of death upon him,—but he was afterwards pardoned, and there was reason to think that, as usual, he had acted as a spy on both sides.¹

End of the
reign of
George II. During the remainder of the reign of George II., Lord Mansfield did not appear before the public except in the ordinary discharge of his official duties. The House of Lords only met to adjourn—and when the King's grandson, the Prince of Wales,² on coming of age, took his seat, and wished to try his powers of oratory in that assembly, it was found impossible to get up a debate for his maiden speech. Cabinets, when

1. 19 St. Tr. 1342-1382; Harris's "Life of Lord Hardwicke," iii. 170; Walp. "Mem. Geo. II." ii. 309.

2. George III.

held, Lord Mansfield regularly attended, but they were very rare, and being chiefly for the consideration of domestic affairs, then of small importance, they attracted little notice.¹ Mr. Secretary Pitt, the Prime Minister, discussed in his own bosom all measures respecting foreign policy and the conduct of the war, and communicated his resolutions only to the functionaries who were to carry them into execution.² Till the commencement of the new reign, Lord Mansfield's seat in the Cabinet was a mere honorary distinction. But from that era he acquired great political consequence, and for fifteen years to come there was probably no individual who more influenced the counsels of the nation both at home and abroad.

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1. It is not very generally known, that both Lord Hardwicke and Lord Mansfield were cabinet ministers during Lord Chatham's first administration.

2. Not always even to them, for he would make the Lords of the Admiralty sign papers which they were not allowed to read.

CHAPTER XXXVI.

CONTINUATION OF THE LIFE OF LORD MANSFIELD
TILL THE DISAPPEARANCE OF JUNIUS.

CHAP.
XXXVI.
Oct. 25,
1760.
Accession
of George
III.

HITHERTO Lord Mansfield had always called himself a Whig, although entertaining and not disguising what are considered Tory principles; but now that on the accession of George III.¹ there was to be a new distribution of parties, and that the Tory flag was openly hoisted by royalty, he rallied under it.

Lord
Mansfield
reappoint-
ed Chief
Justice.

According to the construction put upon the Act of Settlement, which enacted that judges should hold their offices *during good behavior* instead of *during pleasure*, he might have been removed on the demise of the Crown; but he was joyfully reinstated, and he soon became a special favorite of the new Sovereign. His party had been always opposed to Leicester House, and he had been looked upon with dislike by all its adherents, but no sooner did Lord Bute² come forward with pre-

1. George (William Frederick) III., grandson of George II., and eldest son of Frederick, Prince of Wales, was born June 4, 1738; succeeded to the throne 1760; died Jan. 20, 1820.—*Cooper's Biog. Dict.*

2. John Stuart third Earl of Bute (*b.* 1713, *d.* 1792), son of James, second earl, married, in 1736, Mary, daughter of the celebrated Lady Mary Wortley Montague, in whose right he inherited a large fortune. In early life he became by accident acquainted with Frederick, Prince of Wales, and soon acquired great influence over him, though it is difficult to see what were the charms which endeared him to the prince, since he is described as "cold and unconciliating in his manners, proud and sensitive in his nature, solemn and sententious in his discourse." During the later years of George II. he had remained attached to the court of the widowed Princess of



GEORGE III.

tensions to be Prime Minister than there was a secret sympathy between them. They were countrymen, they equally cherished the doctrine of the divine right of kings, and they both hated Pitt. While Bute impatiently coveted the possession of Pitt's power, Murray enviously beheld the dazzling ascendancy attained by the man whom he had often beaten since their poetical struggle at Oxford.

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XXXVI.

Without any quarrel with the falling minister, or formal treaty with his successor, the sagacious Chief Justice showed a growing coldness towards the one,

Wales; and scandal attributed to their relations a character which there is no real evidence to show that they possessed. But no sooner was George III. seated on the throne than Bute took advantage of his ascendancy over the young king to come to the front in politics. After the dissolution of parliament early in 1761, he became one of the Secretaries of State as the colleague of Pitt, to whom he was warmly opposed on the question of the Continental war. Pitt resigned in October, leaving Bute supreme. The discovery of the Family Compact between France and Spain, which Pitt had suspected, led to a necessary rupture with Spain; but Bute was none the less resolved to come to terms with France and to desert Germany, and to reverse the policy of his predecessors. On Nov. 3, 1762, the preliminaries were signed at Fontainebleau, and peace was definitely concluded in the following February. But the ministry was unpopular; and this unpopularity gradually developed into a fierce hatred, which amused itself in burning the Prime Minister in effigy in almost every public place. This extreme feeling can scarcely be said to have been justified by Bute's public measures; and two, at any rate, of his chief sins in the popular view are well set forth by a contemporary writer, who says that he was utterly "unfit to be Prime Minister of England, because he was (1) a Scotchman, (2) the king's friend, (3) an honest man." In April, 1763, he had to yield to the storm of indignation which he had aroused; and he never afterwards filled any prominent office in the State. But he retained his influence over the king, and was all-powerful in the Closet, until George Grenville, after the failure of Bute's attempted intrigues with Pitt, insisted on his complete dismissal from the court as a condition of his own return to power. From this time forward, there is little evidence that Bute had any hand in the politics of the day, though his withdrawal could not remove the suspicion of his secret influence at the back of the throne. During the last twenty-five years of his life he lived in almost complete retirement at Christchurch, in Hampshire, in the midst of his family.—*Dict. of Eng. Hist.*

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XXXVI.
Liaison
between
Lord
Mansfield
and Lord
Bute.

and cordiality towards the other,—not concealing his satisfaction when Lord Bute was made a Secretary of State in the room of Lord Holdernessee and was introduced into the Cabinet. At last the crisis arrived, and it was necessary to take a decided part either with the one or the other. Pitt was now obliged to bring forward great measures in a very different fashion from that adopted by him at the end of the last reign. Having certain intelligence of the family alliance¹ between the several branches of the House of Bourbon, he had formed a magnificent scheme of at once declaring war against Spain, sweeping the ocean of her ships, and conquering the richest of her colonies. There seems every reason to believe that if promptly executed it would certainly have succeeded—but he was obliged to submit it to a cabinet. Mansfield took part with Bute, and the Great Commoner, being outvoted, declared that “he would not remain in a situation which made him responsible for measures he was no longer allowed to guide.” From that hour Lord Bute was considered Prime Minister, although it was some time before he could be placed at the head of the Treasury, from the adhesiveness of the Duke of Newcastle, who was willing to submit to any degradation rather than be driven to resign.

Sept. 18,
1761.

Resigna-
tion of
Lord
Chatham.

The new chief acted most cordially with Lord Mansfield, who had so essentially helped his elevation; and their proceedings were very prudent. Furious popular discontent was apprehended from the dismissal of the

1. The Family Compact is the name applied to various treaties between the Bourbon Kings of Spain and France during the eighteenth century. The first compact began in 1733, and being specially directed against English trade led, in 1739, to a war between Spain and England. The more famous compact was in 1761, and its object was to associate Spain to France in the Seven Years' War. Pitt had timely warning of the agreement, and the refusal of George III. to sanction an attack on Spain led to his resignation. But when the compact became known, war was inevitable.—*Dict. of Eng. Hist.*

GREAT COMMONER, and even insurrections were talked of in the city of London and other great towns. CHAP.
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“Hi motus animorum, atque hæc certamina tanta,
Pulveris exigui jactu compressa quiescunt.”¹

They advised the King to offer him a pension and a peerage for his wife. The offer was accepted, and the same Gazette announced his resignation and the honors and rewards heaped upon him. For a space he not only ceased to be formidable, but was denounced by his former admirers as sordid and corrupt.² “Oh that foolishhest of men!” cried Gray. “What!” exclaimed Horace Walpole, “to blast one’s character for the sake of a paltry annuity and a long-necked peeress!” The tide ran so strong against the once GREAT COMMONER, that he was obliged to publish a letter addressed to his friend Alderman Beckford, in which he complains of being “grossly misrepresented” and “infamously traduced.”

While counselled by Mansfield, Lord Bute likewise behaved very prudently in opening the negotiation for peace, and in framing the preliminaries, which, though scouted by the ex-Premier, who was for still further humbling the House of Bourbon, were generally considered honorable and advantageous, and were approved of by a vast majority in both Houses of Parliament.

Prudent
advice
given by
Lord
Mansfield
to Lord
Bute.

At this time it was believed by many, that Lord

1. “These commotions of their minds, and these mighty frays, checked by the throwing of a little dust, will cease.” (Virgil.) Said of the battles of the bees. These lines have been applied to the Carnival of the Roman Church, and the season of repose which follows immediately after the ceremony of sprinkling the ashes on Ash Wednesday.

2. “These,” said Burke, “were the barriers that were opposed against that torrent of popular rage which it was apprehended would proceed from this resignation. And the truth is, they answered their end perfectly: this torrent for some time was beaten back,—almost diverted into an opposite course.”—*Annual Register*, 1761, p. 45.

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XXXVI.
Rumor
that Lord
Mansfield
wished to
be Chan-
cellor.
Sept. 1762.

Mansfield, feeling the incompatibility of political power with his present office, desired to hold the great seal; hoping thus to be actual prime minister, while his countryman was at the head of the Treasury. The apprehension of such an arrangement caused deep uneasiness in the Hardwicke family, where a strong desire existed that Charles Yorke should be placed in the "marble chair," to which his father had added such lustre. In a long letter written by him to the ex-Chancellor, giving an account of an interview on the subject¹ with Lord Lyttleton,²—after pointing out the objec-

1. This interview took place in consequence of a letter from Lord Hardwicke to Charles Yorke, containing the following information: "Lord Lyttleton told me that, before he went last to Hagley, his friend Lord Egremont had said much to him on your subject; that Lord Chancellor [Northington] had complained to him of his health, and that he could not go on in his office; that he wished the King and his servants would be thinking of a proper successor, &c.; that, on this occasion, his Majesty had mentioned you, and that you stood high in his opinion. Lord Lyttleton asked his Lordship how Lord Mansfield stood in that respect? to which Lord Egremont had answered, that the King was offended with him for so frequently declining to give his opinion in council, particularly at the last meeting at Lord President's, at which the Duke of Devonshire, Duke of Newcastle, and I were present. I understood that this was thrown out as a lure to me, being of so great consequence to my family."—*Harris's Life of Lord Hardwicke*, iii. 302.

2. George Lyttleton, first Lord Lyttleton, was the eldest son of Sir Thomas Lyttleton, of Hagley, Worcestershire, and born there 1709. He was educated at Eton, and Christ Church, Oxford, after which he became a member of the House of Commons, where he distinguished himself by his opposition to Sir Robert Walpole, on whose resignation he was appointed one of the lords of the Treasury. In 1747 he printed his tract "On the Conversion of St. Paul," for which the university of Oxford offered him the degree of doctor of laws, but he declined it. In 1751 he succeeded his father in the baronetcy; in 1754 he was made a privy councillor, and in 1755 chancellor of the Exchequer. About this time he published his "Dialogues of the Dead." In 1757 he was advanced to the peerage, having resigned his place some time before. In 1764 came out his principal work, the "History of Henry II.," 3 vols., 4to., on which he had been engaged twenty years. He died Aug. 22, 1773. The miscellaneous works of this noble author were published in 2 vols. 1774. His son Thomas, the second Lord Lyttleton, was a young man of genius, but the reverse of his father in moral conduct. He died suddenly,

tions to a Scotchman being prime minister, and the proposal that he himself should have the great seal, he thus shows his jealousy and dislike of the Chief Justice of the King's Bench :

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"I added, with respect to the *thing* itself, that if I could suppose the King would ever do me the honor hinted, I should not be afraid to accept it, tho' I should think it too early, and in many respects not eligible at this time. I enquired how L^d Mansfield stood, & whether he might not be thought of. He answered, that L^d M. would feel nothing personally as to me, because he would see that it was impossible for him to have the great seal, *rebus sic stantibus*.¹ His Lordship answered to a different point from what I meant. I meant to draw from him what he did not mention of the King's displeasure. For as to Lord M.'s feelings, they would be strong, but of no real consequence. His manner has been offensive & unpopular in Westminster Hall ; &, as S^r Fr. Bacon says, *perhaps I may improve whilst others are at a stand*."

Few, however, will believe that the wary Mansfield ever had such a fit of wild ambition, or could have been for a moment blind to the insuperable difficulties which his supposed scheme would have had to encounter.

For some reason that has never been explained, and which it would be vain now to conjecture, there was, soon after, a great coldness between the two Scotchmen, who, by a singular concatenation of improbable circumstances, had actually guided the destinies of England ; and although the Chief Justice still continued a member of the Cabinet, the Prime Minister listened very little to his advice. Whether on this account I have no means of knowing, but certainly *henceforth*, he who had appeared a prudent statesman, likely long to

Lord
Bute's dif-
ferences
with Lord
Mansfield,
and subse-
quent im-
prudence.

under very mysterious circumstances, Nov. 27, 1779. The Letters and Poems published under his name are spurious.—*Cooper's Biog. Dict.*

1. "Affairs standing thus."

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enjoy power, was regarded as a minion of fortune, doomed to a speedy fall. He was at no pains decently to veil the unbounded power to which he had at once been raised by court favor, without ever before having been in office or made a speech in parliament; he insisted on all preferment passing through his own hands; and although aware of the jealousy excited by allusions to the place of his birth, he wantonly inflamed it by removing many deserving subordinates in the public offices from situations usually held for life, and conferring them on his needy countrymen. Instead of allowing the public to see the falsity, and to be disgusted with the ribaldry, of Wilkes's paper, the "NORTH BRITON," set up against him, he seems to have resolved to verify its assertions while he wished to inflict upon the author the heaviest penalties of the law. Finally, he threw the whole of England into a flame by rashly bringing forward the cider tax, and obstinately persisting in it. Still he was in the possession of royal favor and parliamentary majorities, although his colleagues ventured to remonstrate with him in private, and Lord Mansfield even publicly threw out some hints intimating that there was not an entire coincidence of opinion between them. It was generally thought that he would long enjoy power.

April
1763.
Lord Bute
resigns.

But all of a sudden he voluntarily resigned. In a letter which he wrote at the time, he mainly imputed his fall to the same man who had contributed to his elevation. "Single," he said, "in a cabinet of my own forming, no aid in the House of Lords to support me except two peers (Lords Denbigh and Pomfret), both the Secretaries of State silent, and the Lord Chief Justice, *whom I myself brought into office*,¹ voting for me,

1. I do not perfectly understand the meaning of this; but he must be referring to Lord Mansfield. Pratt was made Chief Justice soon after the accession of George III., but was not created a peer till

yet speaking against me, the ground I tread upon is so hollow, that I am afraid not only of falling myself, but of involving my royal master in my ruin. It is time for me to retire."¹

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Lord Mansfield continued a member of the Cabinet when George Grenville² was placed at the head of the

July, 1765, by the Rockingham administration; so that he could neither have voted nor spoken while Lord Bute was minister.

1. Adolphus, i. 117.

2. George Grenville (*b.* 1712, *d.* 1770) was the son of Richard Grenville, of Wotton, by Hester, Countess Temple. In 1741 he was elected M.P. for Buckingham, which town he continued to represent until his death. In 1744 he was appointed a Junior Lord of the Admiralty, in Henry Pelham's government. In 1747 he was promoted to the same office in the Treasury; and on Newcastle becoming Prime Minister in 1754 he became Treasurer of the Navy. In 1762, when Lord Bute became First Lord of the Treasury, Grenville was made Secretary of State in his place, and leader of the House of Commons. On Bute's resignation in the following April, Grenville became at once Prime Minister and Chancellor of the Exchequer, on the nomination of Bute, who expected to find him a very willing tool; but he soon discovered his mistake. Grenville, who feared the king as little as he did the people, complained bitterly of Bute's secret influence, and at once became odious to the king in consequence. The death of Lord Egremont, Secretary of State, in August, gave George an excuse for changing his ministry; and he accordingly, through Bute's means, opened negotiations with Pitt. These, however, failed; and he was again obliged to fall back upon Grenville, who strengthened his position by enlisting the Bedford faction on his side. But the new accession of strength did not save the ministry. The issue of general warrants, and the struggle with Wilkes, cost the ministry 100,000*l.*, and lost the many share of popularity they ever possessed. This measure was soon followed by the Stamp Act. In July, 1765, the king, seeing his way to form a new ministry, summarily dismissed Grenville and the Duke of Bedford. In 1769 Grenville became reconciled to his brother-in-law, Lord Chatham, and took an eager part in the debates on the expulsion of Wilkes. In 1770 he carried his Bill on Controverted Elections, by which he transferred the trial of election petitions from the House at large to a Select Committee of the House. For some time past his health had been declining, and in the autumn of 1770—only a few months after passing his Election Bill—he died. "He took public business," Burke said of him in the House of Commons, "not as a duty he was to fulfil, but as a pleasure he was to enjoy; he seemed to have no delight out of the House, except in such things as some way related to the things that were to be done in it. If he was ambitious, I will say this for him, his ambition was of a noble and generous strain."—*Dict. of Eng. Hist.*

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Lord
Mansfield
continues a
member of
the Cabi-
net.

Treasury, but it seems hardly credible that he should have been present at its deliberations when the proceedings were ordered to be taken against the printers and publishers of the *North Briton*, No. 45: (1) Those proceedings were so likely to come before him judicially, that he must have been struck with the impropriety of taking part in originating them. (2) The proceedings were so illegal and indiscreet, that, if present, he must have protested against them.

May 6,
1763.

The parties aggrieved avoided the Court of King's Bench, and sought redress in the Court of Common Pleas from Lord Chief Justice Pratt, who was upon the eve of acquiring the greatest degree of popularity ever enjoyed by an English judge. He liberated Wilkes from the Tower, on the ground of parliamentary privilege; and, declaring general warrants to be illegal, he obtained from juries very heavy damages for those who had been arrested, and whose papers had been seized on the suspicion that they were concerned in printing or publishing the No. of the *North Briton* which had been singled out for prosecution.¹

General
Warrants.

The legality of general warrants, however, was brought before Lord Mansfield by the law officers of the Crown, who, in a case of *Leach v. Money*, tendered a bill of exceptions to Lord Camden's direction to the jury, that the general warrant against the printers and publishers of the *North Briton* afforded no justification for the defendant, a king's messenger, in arresting a plaintiff under it.²

1. 2 Wilson, 151-160; 19 St. Tr. 982-1002; 2 Wilson, 206-244.

2. Sir James Burrow, with very amusing minuteness, describes the ceremony of Lord Chief Justice Pratt coming in person into the Court of King's Bench, and acknowledging his seal to the bill of exceptions; thus concluding: "The Lord Chief Justice of the Common Pleas immediately retired, without sitting down; and the Lord Chief Justice of this Court attended him till he was got past the Puisne Judge, but not quite to the door of the Court."—(3 Burr. 1694.) Nowhere is etiquette so strictly attended to as in Westminster Hall.

The question having been very elaborately argued by the Attorney General De Grey¹ on the one side, and Dun-

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1. William De Grey was the third son of Thomas De Grey and Elizabeth, daughter of William Wyndham of Felbrigge, and was born at Merton on July 7, 1719. Destined to pursue the law as a profession, he received his education at Christ's College, Cambridge; and, entering the Middle Temple in January, 1738, he was called to the bar on November 26, 1742. After sixteen years he attained the distinction of king's counsel to George II. in 1758; and in September, 1761, that of Solicitor General to the Queen of George III. In the latter year he was elected member of parliament for Newport in Cornwall, and in December, 1763, was appointed Solicitor General to the King. From this he rose, in August, 1766, to the post of Attorney General, succeeding the Hon. Charles Yorke; when he received the honor of knighthood. He was also comptroller of the first-fruits and tenths. His advance to the honors of his profession, and his attainment of its highest forensic dignity, without apparent parliamentary interest (for hitherto he is not reported as taking any active part in the House of Commons), are evidence that his rise was obtained by his eminent legal ability. He filled the office of Attorney General for nearly five years; and in the parliament following his appointment had the honor of being elected by three different constituencies: at first for Newport and Tamworth, selecting the former; and afterwards, in January, 1770, for the University of Cambridge, when the Hon. Charles Yorke accepted the Great Seal. In that parliament he contended against the legality of Mr. Wilkes's return for Middlesex, and on all other occasions strenuously supported the measures of Lord North's ministry. On a motion to abridge the power of the Attorney General in filing ex-officio informations, he boldly defended himself, and proved that the power was not only constitutional, but, when discreetly exercised, essentially necessary. As Solicitor General he argued ably and ingeniously in favor of the king's messengers acting under the general warrant issued by Lord Halifax, but the real question was artfully avoided by a submission to a formal objection; and as Attorney General he conducted the proceedings against Wilkes, when he surrendered in 1768 after his conviction, on the question of his outlawry, in the various discussions previous to his sentence, and in the writ of error before the House of Lords, by whom the conviction and sentence were confirmed. Though sharing, of course, the unpopularity with which all the opponents of that demagogue were visited, Sir William De Grey does not seem to have excited any special animosity, but to have been regarded as merely doing his duty as an officer of the Crown. Early in 1771 Sir John Eardley Wilmot resigned, and Sir William was immediately, on January 25, appointed his successor as Lord Chief Justice of the Common Pleas. One of the first public questions which he had to determine was whether Brass Crosby, the Lord Mayor of London, should be discharged from the custody of the lieutenant of the Tower, where he had been imprisoned by warrant

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ning (who now first distinguished himself) on the other, Lord Mansfield, although there was to be a second argument, stated the impression then upon his mind in favor of the doctrine laid down by Chief Justice Pratt :

"We are to consider," said he, "the validity of a warrant in which no person is named or described. The common law in many cases, gives authority to arrest without warrant, more especially when taken in the very act ; and there are many cases in which particular statutes have given authority to apprehend under general warrants — as warrants to take up 'loose, idle, and disorderly persons.' But here it is not contended that there could be an arrest at common law without warrant, or that any statute gives a warrant in this general form. Therefore we must see whether, by the common law, such a warrant is valid. At present it seems to me unfit that the information as to a particular individual having committed the offence specified in the warrant should be received by the officer, and that he, in his discretion, should determine whether it is sufficient. The magistrate ought to decide and give certain directions to the officer ; the one acting judicially, the other ministerially. So it stands on reason and convenience. Then as to authorities. Hale and all others hold such an uncertain warrant void, and there is no case or book

from the Speaker of the House of Commons ; and he wisely decided not to interfere with the privileges of parliament. After presiding over his court for nearly ten years, the failure of his health obliged him to resign in June, 1780. In acknowledgment of his services the king in the following October called him up to the House of Peers by the title of Lord Walsingham. He enjoyed his new honors for little more than six months, dying on May 9, 1781 ; when he was buried at Merton. He was a most accomplished lawyer and of the most extraordinary power of memory. "I have seen him," says Lord Eldon, "come into court with both hands wrapped up in flannel (from gout). He could not take a note, and had no one to do so for him. I have known him try a cause which lasted nine or ten hours, and then, from memory, sum up all the evidence with the greatest correctness." He married in 1743 Mary, daughter of William Cowper, Esq., M.P. for Hertford, and first cousin of the poet ; and by her (who survived him till 1800) he left (besides one daughter) an only surviving son, who succeeded to his title and estates, which are now enjoyed by the fifth baron in succession.—*Foss's Lives of the Judges.*

to the contrary. It is said 'the usage sanctions general warrants,' and many such have been issued since the Revolution down to this time. But a usage to grow into law must be a general usage, *communiter usitata et approbata*,¹ and which, after a long continuance, it would be mischievous to overturn. This is only the usage of a particular office—the Secretary of State's—and contrary to the usage of all other justices and conservators of the peace. However, let it stand over for a further argument."

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When the case again came on, Charles Yorke, who in the mean time had been promoted to be Attorney General, wishing to avoid a judgment against the Crown on the merits, admitted that a formal objection which had been made to the defence must prevail, and nothing more was said about GENERAL WARRANTS; but ever since they have been considered illegal, and credit is due to Lord Mansfield for supporting principle against precedent in this case, considering that the warrant in question had been issued by his own colleague.²

He had a still nobler opportunity of raising his fame in reversing the outlawry of Wilkes. This profligate demagogue, after being liberated from the Tower, seeing no immediate means of exciting public sympathy, withdrew to Paris, and domiciled himself there. In the mean time, two criminal informations were filed against him by the law officers of the Crown; one for writing and publishing the famous No. 45. of the NORTH BRITON, and the other for writing and publishing an obscene and impious poem called an ESSAY ON WOMAN. Even before trial he was expelled the House of Commons for these alleged offences, and he was afterwards found *guilty* on both informations in his absence. Process of outlawry then issued against him, and, as he did not appear to receive sentence, he was actually outlawed.

Wilkes's
outlawry.

Jan. 1764.

February.

1. "Used and approved generally."

2. 19 St. Tr. 1001-1028; 3 Burr. 1692-1742.

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But on the dissolution of parliament in the spring of the year 1768, the nation being frenzied by faction, he thought he might turn the extreme unpopularity of the Government to his own advantage, and, coming over from France while still an outlaw, he presented himself as a candidate to represent the city of London in the House of Commons. Although defeated there, he was returned by an immense majority for the county of Middlesex. Still it was necessary, before he could take his seat, that the outlawry should be reversed, and for this purpose he appeared in person in the Court of King's Bench. After several irregular proceedings, which he attempted with a view of entrapping or overawing the judges, they committed him to prison till the validity of his outlawry could be decided in due form of law, and they very properly refused several applications which were made to bail him. The mob were highly exasperated by the captivity of their idol; attempts were made to rescue him; there were dangerous riots in the metropolis; some lives were lost; and dreadful denunciations and threatenings were poured forth against Lord Mansfield.

June 8,
1768.

The hearing of Wilkes's case occupied several days; Westminster Hall, Palace Yard,¹ and the surrounding streets being filled by an innumerable multitude of Wilkites, ready to celebrate his triumph or to revenge his defeat.² At last judgment was to be pronounced.

1. New Palace Yard was formerly entered by four gateways, the finest being the "High Gate" on the west, built by Richard II., and only destroyed under Anne. On the left, where the Star Chamber stood, is now the House of the Speaker, an office which dates from the reign of Edward III.: the first Speaker being Sir W. T. Hungerford, elected 1377. On its south side Westminster Hall faces us with its great door and window between two square towers; and above, the high gable of the roof, upon which the heads of Oliver Cromwell, Ireton, and Bradshaw were set up on the Restoration. The head of Cromwell still exists in the possession of Mr. Horace Wilkinson, Sevenoaks, Kent.—*Hare's Walks in London*, vol. ii. p. 378.

2. No one in secret condemned their proceedings more than Wilkes

Lord Mansfield began, and in a very luminous manner went over the various grounds on which it had been argued by the defendant's counsel that the outlawry should be reversed,—all turning on mere technical learning,—and he showed satisfactorily that none of them were well founded. It was thought that he had nothing more to observe, except that the outlawry must be affirmed, when he thus proceeded in a strain of calm and dignified eloquence forever to be had in admiration :

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"These are the errors which have been objected; and, for the reasons I have given, I cannot allow any of them. It was our duty, as well as our inclination, sedulously to consider whether upon any other ground, or in any other light, we could find an informality which we might allow with satisfaction to our own minds, and avow to the world.

Lord
Mansfield's
judgment
reversing
the out-
lawry.

"But here let me pause!—It is fit to take some notice of the various terrors being held out; the numerous crowds which have attended and now attend in and about the hall, out of all reach of hearing what passes in court; and the tumults which, in other places, have shamefully insulted all order and government. Audacious addresses in print dictate to us, from those they call the people, the judgment to be given now, and afterwards upon the conviction. Reasons of policy are urged, from danger to the kingdom by commotions and general confusion.

"Give me leave to take the opportunity of this great and respectable audience to let the whole world know that all such attempts are vain. Unless we have been able to find an error which will bear us out to reverse the outlawry, it must be affirmed. The constitution does not allow reasons of state to influence our judgments. God forbid it should! We must not regard political consequences, how formidable soever they might be; if rebellion was the certain consequence, we are bound to say '*Fiat justitia, ruat cælum.*'¹ The constitution trusts the King with reasons of state and policy; he may stop

himself; and he used afterwards to say that "he never was much of a Wilkite."

1. "Let justice be done, though the sky should fall."

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XXXVI.

prosecutions; he may pardon offences; it is his to judge whether the law or the criminal should yield. We have no election. None of us encouraged or approved the commission of either of the crimes of which the defendant is convicted: none of us had any hand in his being prosecuted. As to myself, I took no part (in another place) in the addresses for that prosecution. We did not advise or assist the defendant to fly from justice; it was his own act, and he must take the consequences. None of us have been consulted, or had anything to do with the present prosecution. It is not in our power to stop it; it was not in our power to bring it on. We cannot pardon. We are to say what we take the law to be; if we do not speak our real opinions, we prevaricate with God and our own consciences.

"I pass over many anonymous letters I have received. Those in print are public; and some of them have been brought judicially before the Court. Whoever the writers are, they take the wrong way. I will do my duty unawed. What am I to fear? That *mendax infamia*¹ from the press, which daily coins false facts and false motives? The lies of calumny carry no terror to me. I trust that my temper of mind, and the color and conduct of my life, have given me a suit of armor against these arrows. If, during this King's reign, I have ever supported his government, and assisted his measures, I have done it without any other reward than the consciousness of doing what I thought right. If I have ever opposed, I have done it upon the points themselves; without mixing in party or faction, and without any collateral views. I honor the King, and respect the people; but many things acquired by the favor of either are, in my account, objects not worth ambition. I wish popularity; but it is that popularity which follows, not that which is run after; it is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong upon this occasion to gain the huzzas of thousands, or the daily praise of all the papers which come from the press: I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels; all that falsehood and malice can invent, or the credulity of a deluded populace

1. "Lying report."

can swallow. I can say, with a great magistrate, upon an occasion and under circumstances not unlike, 'Ego hoc animo semper fui, ut invidiam virtute partam, gloriam, non invidiam putarem.'¹

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"The threats go further than abuse : personal violence is denounced. I do not believe it ; it is not the genius of the worst of men of this country, in the worst of times. But I have set my mind at rest. The last end that can happen to any man never comes too soon if he falls in support of the law and liberty of his country (for liberty is synonymous to law and government). Such a shock, too, might be productive of public good ; it might awake the better part of the kingdom out of that lethargy which seems to have benumbed them ; and bring the mad part back to their senses, as men intoxicated are sometimes stunned into sobriety.

"Once for all, let it be understood that no endeavors of this kind will influence any man who at present sits here. If they had any effect, it would be contrary to their intent ; leaning against their impression might give a bias the other way. But I hope, and I know, that I have fortitude enough to resist even that weakness. No libels, no threats, nothing that has happened, nothing that can happen, will weigh a feather against allowing the defendant, upon this and every other question, not only the whole advantage he is entitled to from substantial law and justice, but every benefit from the most critical nicety of form which any other defendant could claim under the like objection. The only effect I feel from such outrages is an anxiety to be able to explain the grounds upon which we proceed ; so as to satisfy all mankind that a flaw of form given way to in this case could not have been got over in any other."²

1. "I have always been of this opinion, that the unpopularity gained by doing one's duty is *glory*, not a *disgrace*."

2. Lord Brougham says,—"It would be difficult to overrate the merit of the celebrated address to the public, then in a state of excitement almost unparalleled, with which he closed his judgment upon the application to reverse Wilkes's outlawry. Great elegance of composition, force of diction, just and strong but natural expression of personal feelings, a commanding attitude of defiance to lawless threats, but so assumed and so tempered with the dignity which was natural to the man, and which here, as on all other occasions, he sustained throughout, all render this one of the most striking productions on record."—*Statesmen*, i. 121.

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He then pointed out the fatal objection to the proceedings which had escaped the counsel for the defendant, and judgment was given that the outlawry should be reversed. This was heard with reverential silence.

Wilkes had still to be sentenced upon the two convictions, and on a subsequent day he was fined 1000*l.* and ordered to be imprisoned a year and ten months. He brought a writ of error in the House of Lords, contending that the informations had not been duly filed, and that Lord Mansfield had improperly allowed them to be amended; but the judgment of the Court of King's Bench was affirmed; and, however much he might be aggrieved by the resolutions of the House of Commons unconstitutionally disqualifying him from being a representative of the people, he was bound to admit that justice was ever purely and impartially and mildly administered to him in the courts of law.¹

Lord
Mansfield
retires
from the
Cabinet.

Although Lord Mansfield had ceased to be a member of the Cabinet, he by no means withdrew from politics. Yet he never allied himself with any opposition party. Avowing himself to be a friend to prerogative, he attacked all measures that had an over-liberal aspect, from whatever quarter they came; and while his principles were called arbitrary, it was allowed that he maintained them with independence.

Disputes
with
America
A.D. 1765
—1768.

When the disputes began with America, he boldly contended both for the justice and the expediency of the tax imposed by the mother country on the colonies towards the expense of defending them. This opinion is now considered erroneous, but all must agree with him in condemning the vacillating policy then pursued, by which resistance was encouraged, repose and mutual confidence became impossible, insult was offered when injury was redressed, and placable petitioners were turned into inveterate rebels.

1. 4 Burr. 2527-2578; 19 St. Tr. 1075-1138.

The original Stamp Act,¹ which was destined to produce such mighty effects, when introduced by George Grenville passed both Houses almost without an observation, and was unknown to the English public till they heard of the determination to disobey it. The first grand debate on the subject seems to have been when the Rockingham administration proposed resolutions for repealing it and for asserting the right to impose it. Lord Camden made his maiden speech in the House of Lords, supporting the first, but strongly condemning the last not only as imprudent but false ;—allowing the

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1. The Stamp Act (1764, 1765, 1766) was one of the chief causes of the war with the American colonies. In it George Grenville, as Chancellor of the Exchequer, in 1764, asserted for the first time the right of the imperial legislature to impose taxation on the colonies ; and by it customs duties were charged upon the importation into the colonies of various foreign products. The proceeds of these duties were, on a totally new principle, to be paid into the imperial exchequer, and to be applied, under the direction of parliament, towards defraying "the necessary expenses of defending, protecting, and securing the British colonies and plantations." This act was also accompanied by a resolution, passed by the Commons, that "it may be proper to charge certain stamp duties" in America, as the foundation of future legislation. A year's delay was allowed by Grenville before passing the threatened bill, but in the following year, in spite of the unanimous protests of the American colonies, and their assertion of their constitutional right to be taxed only through their representatives, the fatal bill passed almost without opposition. The colonists, however, resisted its execution, and their discontent became so marked that parliament was reluctantly obliged to take notice of it. Pitt, who had been prevented by illness from being present at the discussions on the bill, now came forward, and, insisting that taxation without representation was illegal, urged the immediate repeal of the tax, while he proposed to uphold the dignity of the mother country by asserting the general legislative authority of parliament over the colonies. From this act he expressly excepted the right of taxation, but the Crown lawyers were against him, and, in spite of the fact that Lord Rockingham was now at the head of the government, the exception was eliminated, and the bill was passed maintaining the absolute right of England to make laws for the colonies. Though defeated in this particular, Pitt carried his original proposal, and in 1766 the Stamp Act was repealed, while at the same time several of the obnoxious duties which had been imposed in 1764 were withdrawn and others were modified.—*Dict. of Eng. Hist.*

CHAP. XXXVI. supremacy of the British legislature over the colonies for all purposes except taxation, but insisting that taxation and representation must go together, and that, the colonies being unrepresented in our House of Commons, any attempt to impose a tax upon them was illegal. Lord Mansfield revised and published his powerful speech in answer. Thus he propounded his doctrine of virtual representation, which was afterwards so much relied upon :

“There can be no doubt but that the inhabitants of the colonies are represented in parliament as the greatest part of the people of England are represented ; among nine millions of whom there are eight who have no votes in electing members of parliament. Every objection, therefore, to the dependency of the colonies upon parliament, which arises to it upon the ground of representation, goes to the whole present constitution of Great Britain ; and I suppose it is not meant to new-model that too. People may form their own speculative ideas of perfection, and indulge their own fancies or those of other men. Every man in this country has his particular notions of liberty ; but perfection never did, and never can, exist in any human institution. For what purpose, then, are arguments drawn from a distinction in which there is no real difference, of a virtual and actual representation ? A member of parliament, chosen for any borough, represents not only the constituents and inhabitants of that particular place, but he represents the inhabitants of every other borough in Great Britain. He represents the city of London, and all the other commons of this land, and the inhabitants of all the colonies and dominions of Great Britain ; and is in duty and conscience bound to take care of their interests.”

Having treated the subject at very great length, in the vain hope of convincing all his hearers, and extinguishing that sympathy in England for the Americans which was the true cause of their resistance, he concluded with this impressive warning :

“You may abdicate your right over the colonies. Take care, my Lords, how you do so, for such an act will be irrevoc-

cable. Proceed then, my Lords, with spirit and firmness ; and, when you shall have established your authority, it will then be a time to show your lenity. The Americans, as I said before, are a very good people, and I wish them exceeding well ; but they are heated and inflamed. The noble and learned Lord who preceded me concluded with a prayer ; I cannot conclude better than by saying to it AMEN ! and in the words of Maurice,¹ Prince of Orange, concerning the Hollanders, ' God bless this industrious, frugal, and well-meaning, but easily deluded people ! ' ' ' ²

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Lord Mansfield, without entering into systematic opposition, had been much alienated from the Court both during Lord Rockingham's first administration, and that strange pieballed affair ³ called " Lord Chatham's second administration," when the supposed Prime Minister, holding the privy seal, was generally secluded from all society, and knew nothing of public measures except from the newspapers. The Chief Justice's only considerable public exhibition during this period was his attack upon the unconstitutional doctrine of Lord ^{Dec. 1776.} Chatham and Lord Camden, that, in a case of great public emergency, the Crown could by law dispense with an act of parliament. The question arising from the embargo upon the exportation of corn, in consequence of apprehended famine, he proved triumphantly that, although the measure was expedient and proper, it was a violation of law, and required to be sanctioned by a bill of indemnity.⁴ Thus the supposed favorer of prerogative gained a decided victory over those who

1. Maurice, Count of Nassau and Prince of Orange, Stadtholder of the United Dutch Provinces, born at Dillenberg 1567, died at The Hague 1625. He was the second surviving son of William I. of Orange, surnamed the Silent, by Anna, the daughter of Maurice of Saxony.

2. Holliday, 242 ; 16 Parl. Hist. 172.

3. See Macaulay's Essay on Earl of Chatham.

4. 16 Parl. Hist. 250. This doctrine, acted upon in 1827, during the administration of Mr. Canning, and on several subsequent occasions, is now universally taken for constitutional law.

CHAP. XXXVI. prided themselves in being considered the advocates of popular rights.

Oct. 1768.

When Lord Chatham at last resigned, Lord Mansfield was called in to advise the Duke of Grafton, who was carrying on the government on Tory principles, persisting in the taxation of America by the British Parliament, and in disqualifying Wilkes by a vote of the House of Commons.

Lord Mansfield again refuses the great seal.

The two Houses being assembled in January, 1770, Lord Chatham, restored to the vigorous exercise of his faculties, opened a furious opposition to the Government; and Lord Camden, still holding the great seal, cordially coalesced with him. By Lord Mansfield's advice, a resolution was formed to dismiss Lord Camden from his office. But a tremendous difficulty arose in finding a successor to him. The King and the Duke of Grafton repeatedly urged Lord Mansfield himself to become Chancellor; but, whatever his inclination may have been when Lord Bute was minister, in the present rickety state of affairs he peremptorily refused the offer, and, on the contrary, suggested that the great seal should be given to Charles Yorke, who had been afraid that he would snatch it from him. By Lord Mansfield's advice it was that the King sent for Charles Yorke, and entered into that unfortunate negotiation with him which terminated so fatally,—occasioning the comparison between this unhappy man, destroyed by gaining his wish, and Semele perishing by the lightning she had longed for.¹ The Chief Jus-

1. Horace Walpole's Letter to Sir H. Mann, Jan. 22, 1770.

Semele, a daughter of Cadmus by Hermione, the daughter of Mars and Venus. She was tenderly beloved by Jupiter; but Juno, who was always jealous of her husband's amours, and who hated the house of Cadmus because they were related to the goddess of beauty, determined to punish this successful rival. She borrowed the girdle of Ate, which contained every wickedness, deceit, and perfidy, and in the form of Beroe, Semele's nurse, she visited the house of Jupiter's mistress. Semele listened with attention to the artful admonitions



THIRD DUKE OF GRAFTON.



LORD NORTH, EARL OF GUILFORD.

tice was again implored to condescend to become Chancellor, but he insisted upon the seal being put into commission ; and he named three commissioners, over whom he was supposed to exercise unbounded influence, and whose decrees he was afterwards said to dictate.¹

For some months he presided on the woolsack as Speaker of the House of Lords, and, in point of fact, exercised almost all the functions belonging to the office of Lord Chancellor. He maintained his ascendancy even when, on the retreat of the Duke of Grafton, Lord North² was, with his concurrence, placed at the head of the Treasury ; although this minister, as he established himself in the favor of the Sovereign and in the confidence of parliament, gradually escaped from the thralldom under which he had commenced his ministerial career.

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Jan. 28,
1770.

of the false Beroe, and was at last persuaded to entreat her lover to come to her arms with the same majesty as he approached Juno. This rash request was heard with horror by Jupiter ; but, as he had sworn by the Styx to grant Semele whatever she required, he came attended by the clouds, the lightning, and thunderbolts. Semele's mortal nature could not endure so much majesty, and she was instantly consumed with fire.—*Lempriere's Classical Dict.*

1. Mr. Justice Bathurst (afterwards Lord Bathurst), Mr. Justice Aston, and Mr. Baron Smyth.

2. Frederick North, Earl of Guildford, generally called Lord North, belongs to English history as chief of the administration during the American war of independence. He was appointed Commissioner of the Treasury 1759 ; and resigned with his leader in July, 1765, when he joined the opposition to the Rockingham ministry. He came into office again with the Grafton ministry, 1766 ; in 1767 became Chancellor of the Exchequer ; and in 1770 succeeded the Duke of Grafton as minister, when he brought in a bill for the repeal of all the duties lately imposed upon the American colonists, with the exception of that upon tea, and this exception, in 1773, led to disturbances which in 1775 merged in actual hostilities, and to the Declaration of Independence, 4th July, 1776. The struggle lasted during the whole of Lord North's administration, but was virtually ended by the surrender of Lord Cornwallis at Yorktown, 19th October, 1781. Lord North resigned on the 20th of March, 1782. He became Earl of Guildford by the death of his father in 1790, and died 1792, after being afflicted several years with blindness.—*Cycl. Univ. Biog.*

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During the whole of the stormy session of 1770, the Chief Justice acted a very conspicuous part; and conflicts, similar to those between Pitt and Murray in the House of Commons, were nightly witnessed between Chatham and Mansfield in the House of Lords.

Question
respecting
the Middle-
sex elec-
tion.

The "Great Patriot," having with all his ancient energy resumed his favorite post as leader of the opposition, and moved as an amendment, in the debate on the address, "that this House would take into consideration the proceedings of the House of Commons touching the incapacity of John Wilkes, Esq., whereby the electors of Middlesex were deprived of their free choice of a representative,"—

Lord Mansfield said: "I have never delivered any opinion on the legality of the proceedings of the House of Commons on the Middlesex election; nor, whatever expectations may be formed, will I now declare my sentiments. They are locked up in my own breast, and shall die with me. I wished to avoid all allusion to the subject, but the amendment moved is of a nature so extraordinary and alarming as to preclude the possibility of my remaining silent. I acknowledge the distracted state of the nation, but am happy to affirm, with a safe conscience, that it can in no respect be attributed to me. Declarations of law made by either House of Parliament are always attended with bad effects. I constantly oppose them when I have an opportunity; and never, in my judicial capacity, think myself bound to honor them with the slightest regard. There is a wide distinction between general declarations of law and particular decisions which may judicially be pronounced by either House on a case regularly submitted to their discussion and properly the subject of their jurisdiction. A question relating to the seat of one of their members can only be determined by that House, nor is there any appeal from their decision. Wherever a court of justice is supreme, as the House of Commons in matters of election, the determination of that court must be received and submitted to as the law of the land. If there be no appeal from a judicial sentence, where shall it be questioned, and how shall it be reversed? I avoid entering into the merits of the late election

from a conviction that your Lordships have no right to inquire into them. The amendment threatens the most pernicious consequences, as it manifestly violates every form and law of parliament, must stir up a quarrel between the two Houses, and may entirely destroy the balance of the constitution." CHAP.
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Lord Chatham, although not entitled to address the House a second time, immediately rose, and spoke as follows, at first in a tone of constrained calm, but soon bursting into fury :

"So alluded to by the noble and learned Chief Justice of the King's Bench, I must beg the indulgence of your Lordships. No man is better acquainted with his great abilities and great acquirements than I am, or has higher respect for them. I have had the pleasure of sitting with him in the other House of Parliament, and I have often felt his power. But on the present occasion I meet him without fear. The constitution has already been openly invaded, and I have heard, with horror and astonishment, that invasion defended upon principle. What is this mysterious power, undefined by law, which we must not approach without leave, nor speak of without reverence? which no man may question, and to which all men must submit? I thought the slavish doctrine of passive obedience had long since been exploded; and, when our kings are obliged to confess that their title to the crown and the rule of their government have no other foundation than the known laws of the land, I never expected to hear a divine right or a divine infallibility attributed to any other branch of the legislature. Power without right is the most odious and detestable object that can be offered to the human imagination: it is not only pernicious to those who are subject to it, but tends to its own destruction. It is, as Littleton has truly described it, *res detestabilis et caduca*.¹ I acknowledge the just power, and reverence the true privileges, of the House of Commons. For their own sake I would prevent their assuming a jurisdiction which the constitution has denied them, lest, by grasping at an authority to which they have no right, they should forfeit that which they legally possess. But I affirm they have violated the constitution, and betrayed their constituents. Under pretence

1. "An execrable and perishable object."

CHAP.
XXXVI.

of declaring the law, they have made a law, and united in the same persons the offices of legislator and judge. What, then, are all the generous efforts of our ancestors—are all those glorious contentions by which they meant to secure to themselves, and transmit to their posterity, a known law, a certain rule of living, reduced to this conclusion, that, instead of the arbitrary power of a King, we must submit to the arbitrary power of a House of Commons? If this be true, what benefit do we derive from the exchange? Tyranny is detestable in every shape, but in none is it so formidable as where it is assumed and exercised by a number of tyrants.”—After highly applauding the ancient nobility as founders of the constitution, and pointing out how their work was now threatened by the subtleties of lawyers, he thus concluded, casting a scornful glance at Lord Mansfield: “Those *iron* barons (for so I may call them when compared with the silken barons of modern days¹) were the guardians of the people; yet their virtues were never engaged in a question of such importance as the present. A breach has been made in the constitution; the battlements are dismantled; the citadel is open to the first invader; the walls totter. What remains, then, but for us to stand foremost in the breach, to repair or perish in it?”

Lord Mansfield did not attempt any reply, and the amendment was negatived without a division.²

May 1,
1770.

Nevertheless, Lord Chatham actually laid on the table of the House of Lords a bill to reverse the decision of the House of Commons by which Colonel Luttrell,³ with a small minority of votes, was declared the lawful representative for the county of Middlesex, on the ground that Mr. Wilkes, who had the majority, was ineligible. On this occasion he inveighed with increased violence against the arbitrary proceedings of the Lower House, exclaiming,—

“Fye on’t! O fye! ’tis an unweeded garden
That grows to seed; things rank and gross in nature
Possess it merely.”

1. I know not whether he alluded to the black silk robe which Lord Mansfield and other law lords always wore when attending the House.

2. 16 Parl. Hist. 644-666.

3. Nat. Biog.

He then darted at another quarry :

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"My Lords, I am apprehensive—I am too apprehensive—that these waters of bitterness have their source too near the palace. [Lord Pomfret called him to order, but he continued.] My Lords, I do not retract my words. Though I shall never abet the clamors of faction, I will ever stand forth an advocate for the just rights of the people ; and, while I am able to crawl upon the surface of this globe, I will pledge myself to their cause, conscious that it must be the cause of liberty and virtue. I esteem the King in his personal capacity ; I revere him in his political one ; and I hope he will show his regard for the principles which placed his family on the throne by dissolving a House of Commons which has forgotten from whom it originated and for what purpose it was created,—sporting with the most sacred rights of the people, and abetting the tyranny of those whom it ought to control and to punish."

Lord Mansfield's faculties, instead of being excited, seem to have been paralyzed by this ebullition. He was expected to follow immediately, but he remained silent, and, after a long pause, the friends of the bill called out "Question!" "Divide!" He was at last forced up ; but laboring, I presume, under a consciousness of the badness of his cause, he spoke in a style characterized as "frigid and pettifogging." He denied that Colonel Luttrell was in a minority, as that candidate had 296 votes to *nothing* ; for the 1143 votes nominally given for Mr. Wilkes, being given for a candidate who was known to be disqualified, were "*thrown away*," and were no votes at all. Notwithstanding the instance of Sir Robert Walpole, who had been reëlected immediately after having been expelled,¹ he maintained that, according to understood law and usage, a person expelled could not be reëlected in the same parliament, whatever right he might have after a dissolution. Having pretty well disclosed the secret which he said was to die with him, he unaccountably added, "What

Lord
Mansfield
quails
under the
infliction.

1. See vol. iii. p. 240.

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part I took previously in this matter shall ever remain with myself: I have, I must confess, deposited it in the breast of one of the royal family, but, resting secure in that confidence, it shall never be disclosed to another." He recapitulated his arguments to show that the judgment of the House of Commons on this subject, right or wrong, could not be questioned elsewhere; and he tried to rally his spirits as he concluded with these observations: "But suppose your Lordships coincide with the motion,—suppose we all agree *nem. con.* to repeal the decision of the House of Commons, and to seat Mr. Wilkes as representative for Middlesex, instead of Colonel Luttrell,—good God! what may be the consequence? The people are violent enough already, and to have the superior branch of the legislature join them would be giving such a public encouragement to their proceedings that I almost tremble while I even suppose such a scene of anarchy and confusion."

These observations were very roughly handled by Lord Camden and other peers who followed; and the Parliamentary History adds, "Lord Shelburne, in a severe speech upon the Ministry, endeavored to call up Lord Mansfield again, but it was impossible." The bill was rejected on the second reading by a majority of 89 to 43.¹ Nevertheless, the opposition exulted on account of the discomfiture of Lord Mansfield, which they reckoned the omen of future triumphs to their party, and they made a run at him, thinking still further to lower his authority, by sneering at him on all occasions, as well as by openly assailing him. But speedily his nerves were restrung, and he was again the bold and formidable champion of the Government. Lord Chatham, in an unlucky moment venturing to treat the question of the Middlesex election *legistically*, had

1. 16 Parl. Hist. 955-966.

asserted in a very authoritative tone that "actions would lie against the whole House of Commons for having unseated Wilkes, and deprived the electors of the county of Middlesex of their franchise." He was asked, "Who are to be plaintiffs? and are the defendants to be sued as a corporation or as individuals?—how is the distinction to be made between the members who voted in the majority and in the minority?—by what evidence are their votes either way to be proved?—how is the defence to be conducted?—out of what fund are the damages to be paid?—and how are illiterate juries thenceforth to be prevented from being judges of all the privileges of parliament?" Lord Chatham's reckless disregard of such considerations caused exceeding joy to Mansfield, who exclaimed, "The Lord has delivered him into my hand!" and for a long time made this supposed right of action against the House of Commons the burden of his song.¹

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Lord
Chatham's
blunder
about "an
action for
damages
against
the House
of Com-
mons."

Lord Chatham thought he would have his revenge by trying to raise a laugh against Lord Mansfield for his supposed sudden conversion to the liberal side, and for trying to please the mob by supporting the bill to take away the protection which peers' servants had hitherto enjoyed against being sued for their debts while parliament was sitting. The Chief Justice, after ably defending the principle of the bill, asked, "Shall it be said that you, my Lords, the grand council of the

May 9,
1770.

1. Very vague notions seem to have prevailed in those days respecting legal remedies. A citizen of London brought to trial an action before Lord Mansfield to recover back the sum he had been obliged to pay for taxes to the King, on the ground that, the county of Middlesex not being properly represented, the House of Commons had no right to tax the people, and all laws made by parliament were void. Of course he was speedily nonsuited, and reprimanded for his presumption.—(1 Evans, 34.) During the passing of the Reform Bill, in 1832, some hot-headed and absurd men talked of a refusal to pay taxes if the bill should be rejected; but this they meant as an act of resistance to authority, not as what they could justify in a court of law.

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nation, the highest judicial and legislative body of the realm, endeavor to evade by privilege those very laws which you impose upon your fellow-subjects? Forbid it, justice! The law ought to be equally open to all: any exemption to particular men, or particular ranks of men, is, in a free and commercial country, a solecism of the grossest nature." There being a suppressed titter at the expression of these sentiments by the defender of the disfranchisement of Middlesex, he turned round to Lord Chatham, and, eyeing him with calm resolution, thus addressed him :

Lord
Mansfield's
speech
against
Lord
Chatham's
bill to re-
verse the
decision of
the House
of Com-
mons in the
Middlesex
election
case.

" It has been imputed to me by the noble Earl on my left hand that I, too, am running the race of popularity. If the noble Earl means by *popularity* the applause bestowed by after ages on good and virtuous actions, I have long been struggling in that race,—to what purpose all-trying time can alone determine ; but if he means that mushroom popularity which is raised without merit, and lost without a crime, he is much mistaken. I defy the noble Earl to point out a single action in my life where the popularity of the times ever had the smallest influence upon my determination. I thank God I have a more permanent and steady rule for my conduct—the dictates of my own breast. Those who have foregone that pleasing adviser, and given up their minds to the slavery of every popular impulse, I sincerely pity ; I pity them still more if vanity leads them to mistake the shouts of a mob for the trumpet of Fame. Experience might inform them that many who have been saluted with the huzzas of a crowd one day have received its execrations the next ; and many who, by the fools of their own times, have been held up as spotless patriots, have, nevertheless, appeared on the historian's page, when truth has triumphed over delusion, the assassins of liberty. Why, then, can the noble Earl think I am ambitious of present popularity—that echo of flattery and counterfeit of renown ? "

The bill passed without further observation,¹ and Lord Mansfield proved that, although he might be at-

1. 16 Parl. Hist. 974-978.

tacked unsparingly for the doctrines which he laid down, he had it in his power, by a proper display of spirit, to secure for himself the respect and courtesy due to his station. CHAP.
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But he was greatly disappointed if he expected that he was henceforth to enjoy tranquillity. He was now entering the most tempestuous period of his whole life.

JUNIUS¹ having, with unbounded applause and

1. The Letters of Junius. The first letter bearing the signature of "Junius" made its appearance in the *Public Advertiser* for Nov. 21, 1768. But we have the author's own assurance that he had been writing under different names for at last two years previously. It was not, however, till Jan. 21, 1769, that the regular series of political attacks under the title of Junius commenced with an assault on the characters of the Duke of Grafton and Lord North, in a letter addressed to the former of these two nobles. With reference to the Duke we are told that "the finances of a nation sinking under its debts have been committed to a young nobleman already ruined by play"; while Lord North is characterized as "an object of derision to his enemies, and of melancholy pity to his friends." The vacillation and inconsistency of the government are pointed out, and hardly any name mentioned escapes irony or abuse excepting that of Mr. Grenville. The military part of this attack drew out a reply from Sir William Draper, in which he called upon Junius to ask pardon of "Lord Granby and the whole kingdom for his abominable scandal." Letter followed letter between the two combatants, till on March 18 Junius once more turned his batteries directly against the Duke of Grafton for having pardoned a certain Edward MacQuirk, who had been found guilty of murder. This question is made the prelude to a fierce condemnation of the Duke's whole conduct as regards the Wilkes and Luttrell question, his private morals and his political capacity. The Prime Minister is told, "There is something which distinguishes you not only from all other ministers but from all other men. It is not that you do wrong by design, but that you should never do right by mistake." By the end of May the Duke of Bedford is incidentally brought upon the scene to share in the Prime Minister's abuse, and towards the end of July Blackstone is directly attacked for his reflections on Grenville. Towards the middle of September Junius addressed his first letter to the Duke of Bedford, the inheritor of a name "glorious till it was yours": and once more Sir W. Draper came forward for the defence. On Dec. 19, 1769, appeared the famous letter to the King, for which the printers and publishers were tried (1770), on which occasion the jury brought in a verdict of "Guilty of publishing only." The conduct of Lord Mansfield on this occasion laid him open to the attacks of the anonymous writer. Indeed, in the first letter to this great lawyer (Nov., 1770),

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JUNIUS'S
Letter to
the KING.
Dec. 19,
1769.

entire impunity, labelled for a twelvemonth the Duke of Grafton, then at the head of the Treasury, and other

Junius attacks him with peculiar bitterness: "No learned man, even among your own tribe, thinks you qualified to preside in a court of Common Law." In the preceding August (1770) Junius had had published his first letter to Lord North, and there reproached this statesman for appointing Colonel Luttrell Adjutant General of the army in Ireland. With the opening of 1771 foreign politics attracted the pen of Junius, but by the middle of the year he had once more directed his attention to the Duke of Grafton, who, says the author, "is the pillow upon which I am determined to rest all my resentments." Then followed the discussion with Mr. Horne (July to Aug., 1771). Later in the same year Lord Mansfield is again attacked for having bailed John Eyre, a Scotchman, and on Jan. 21, 1772, Junius's last letter appeared in proof of his assertion that on this occasion Lord Mansfield had done "that which by law he was not warranted to do." The same paper contained Junius's appeal to Lord Camden "in the name of the English nation to stand forth in defence of the laws of his country," lest it "should be said that for some months past he had kept too much company with the Duke of Grafton." This letter winds up with the words, "I do not scruple to affirm that in my judgment he [Lord Mansfield] is the very worst and most dangerous man in the kingdom. Thus far I have done my duty in endeavoring to bring him to punishment. But mine is an inferior ministerial office in the temple of justice. I have bound the victim and dragged him to the altar."

The question of the authorship of these letters is one which has severely taxed the critical ingenuity of the last hundred years. Hardly a single prominent statesman of the time who was not himself directly attacked by Junius has wanted champions to assert his claim to their production. Lord George Sackville, Barré, Grattan, Burke, Lord Loughborough, Gibbon, Lord Chatham, and William Mason, Lord Temple, and many others, have all had their supporters; but none of their pretensions can be considered as valid. The weight of inferential evidence seems to point towards Sir Philip Francis, and it is certain that he was not unwilling to be considered as Junius, though he never admitted the claim in words. The test of handwriting seems to tend in the same direction. But, if he be the author, it must be allowed that, however much this distinction may add to his intellectual, it takes away from his moral, character; for he seems to have been receiving favors from and living on intimate terms with many of those whom he assailed most fiercely. The most, however, that can be said in favor of the view that he was the writer is that he is the least unlikely of the most prominent candidates.—*Dict. of Eng. Hist.*

Macaulay also in his Essay on Warren Hastings advocates strongly the theory that Sir Philip Francis and Junius were one. He says: "It is scarcely possible to mention this eminent man without advert-
ing for a moment to the question which his name at once suggests

distinguished public characters, at last addressed a letter to the King himself, which, with some wholesome truths, contained insinuations and charges against his Majesty's conduct and personal honor which must have been very hurtful to his feelings, and tended strongly to deprive him of the esteem and affection of his subjects. Such an outrage must be condemned by all right-thinking persons, as not only contrary to the letter of the law, but as unconstitutional, mischievous, and dastardly. The fiction that the King can do no wrong ought to be respected as the foundation of responsible government, and favorable to liberty as well as order. Public acts should all be presumed to proceed from the advisers of the Crown; and the private life of the Sovereign should be held still more sacred than that of the multitude, which factious opposition has agreed to spare. For calumny and insult he has not, like a

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to every mind. Was he the author of the Letters of Junius? Our own firm belief is that he was. The evidence is, we think, such as would support a verdict in a civil, nay, in a criminal proceeding. The handwriting of Junius is the very peculiar handwriting of Francis, slightly disguised. As to the position, pursuits, and connections of Junius, the following are the most important facts which can be considered as clearly proved: first, that he was acquainted with the technical forms of the Secretary of State's office; secondly, that he was intimately acquainted with the business of the war-office; thirdly, that he, during the year 1770, attended debates in the House of Lords, and took notes of speeches, particularly of the speeches of Lord Chatham; fourthly, that he bitterly resented the appointment of Mr. Chamier to the place of deputy Secretary at War; fifthly, that he was bound by some strong tie to the first Lord Holland. Now Francis passed some years in the Secretary of State's office. He was subsequently chief clerk of the war-office. He repeatedly mentioned that he had himself, in 1770, heard speeches of Lord Chatham; and some of these speeches were actually printed from his notes. He resigned his clerkship at the war-office from resentment at the appointment of Mr. Chamier. It was by Lord Holland that he was first introduced into the public service. Now here are five marks, all of which ought to be found in Junius. They are all five found in Francis. We do not believe that more than two of them can be found in any other person whatever. If this argument does not settle the question, there is an end of all reasoning on circumstantial evidence."

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subject, a remedy either by an appeal to the law or by taking the law into his own hand.

The Attorney General very properly (I think) filed criminal informations against Woodfall,¹ who first published the letter, and against Almon and Miller, who immediately reprinted it. A licenser is not to be endured, and the utmost freedom should be given to fair discussion; but it betrays gross ignorance of the principles by which order is to be preserved in society to contend that no control is to be exercised by the magistrate over the publications which issue from the press. Not only is protection due to the characters of individuals, but no government can stand,—democratical or monarchical,—whatever may be its form—against daily attacks upon its fundamental institutions, and daily exhortations to rise and subvert it. The right of insurrection, which may be resorted to as the last remedy against tyranny and oppression, can never be recognized by any code, or pleaded in any court of justice.

Jan. 2,
1770.
Rex v.
Almon.

Rex v. Almon was the first case brought to trial; and here, without any denial that the letter was a libel, the great point made was, that the evidence was insufficient to render the defendant liable as publisher. A copy was produced which had his name in the title-page as publisher, and which had been bought at his shop from a person acting there as his servant. *Serjeant Glyn*, his counsel, urged that a man cannot be made a criminal by the act of his servant; but Lord Mansfield ruled that a sale by the servant was *prima*

1. William Woodfall, a printer, was tried in 1770 for publishing Junius's "Letter to the King." The right of the jury to judge of the criminality of the libel having been denied by Lord Mansfield, they found the prisoner guilty of "printing and publishing only." Lord Mansfield was severely taken to task in the House of Lords for his arbitrary conduct, but the question was not settled until twenty years after, by Fox's Libel Act.—*Dict. of Eng. Hist.*

facie evidence of a publication by the master, on the principle *qui facit per alium facit per se*;¹ and the jury found a general verdict of GUILTY. In the ensuing term a motion was made for a new trial, on the ground that there was no proof of *criminal intention* on the part of the defendant, or that he even knew of the letter from JUNIUS to the King having been in his shop, or even having been printed or written.

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Lord Mansfield: "I continue to think that the buying of a pamphlet in the open shop of a professed bookseller and publisher of pamphlets, from a person acting in the shop, is *prima facie* evidence of a publication by the master himself; but it is liable to be contradicted, where the fact will permit, by contrary evidence tending to exculpate the master and to show that he was not privy nor assenting to it. Thus the evidence stands good till answered, and, not being answered at all, conclusively supports the conviction."—The other judges concurred, and a rule to show cause was refused.²

This decision of the court was clamorously condemned by the newspapers, and was even commented upon very harshly by Mr. Dunning³ in the House of Commons,⁴ but it is clearly according to law and reason; for, if proof were required of the personal interference or express sanction of the master, libels might

1. "He who acts through another acts of himself."

2. Burr. 2686; 20 St. Tr. 803.

3. John Dunning Lord Ashburton was born at Ashburton, Devonshire, 1731. His father was an attorney, to whom he served his clerkship; after which he removed to London, studied in the Temple, and was called to the bar. In 1759 he drew up "A Defence of the English East India Company" against the claims of the Dutch. This brought him into notice, and he afterwards added to his popularity by being counsel for Wilkes. In 1766 he was chosen recorder of Bristol, and the next year he was appointed Solicitor General, which office he resigned in 1770. On the change of administration, in 1782, he was created Baron Ashburton, sworn of the privy council, and appointed chancellor of the duchy of Lancaster. He died at Exmouth August 18, 1783. Lord Ashburton is one of the many individuals to whom the authorship of the letters of Junius has been ascribed.—*Cooper's Biog. Dict.*

4. 16 Parl. Hist. 1279.

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be published with entire impunity, and the admission of evidence to rebut the presumption affords ample protection for innocence. Afterwards, in the "Reign of Terror" upon the outbreak of the first French Revolution, the doctrine was grossly perverted, and judges refused evidence to prove that libellous articles had been inserted in newspapers when the registered proprietor, who was *prima facie* answerable, was not only lying unconsciously sick in bed at the time of the publication, but had given express orders to the acting editor that the articles should not be admitted. The recurrence of such iniquity is forever prevented by "Lord Campbell's Libel Act,"¹ which saves the master from criminal responsibility for an unauthorized publication by the servant.²

Jan. 13,
1770.
Rex v.
Woodfall.

When the trial against Woodfall, the printer of the MORNING ADVERTISER, came on, there being no doubt respecting the defendant's liability as publisher, an attempt was made to persuade the jury that the letter was not libellous; and the grand dispute arose whether this was a question for the jury or exclusively for the court.

Lord Mansfield said, "All the jury had to consider was, whether the defendant had published the letter set out in the information, and whether the *innuendoes* imputing a particular meaning to particular words, as that 'the K——' meant his Majesty King George III.; but that they were not to consider whether the publication was, as alleged in the information, 'false and malicious,' these being mere formal words; and that whether the letter was libellous or innocent was a pure

1. In 1843 the law of libel was still further amended by Lord Campbell's Act, which allows a defendant to plead that the publication was without his authority, and was from no want of care on his part, whilst he may also plead that a libel is true and for the public benefit.—*Dict. of Eng. Hist.*

2. 6 & 7 Vic. c. 96, s. 7.

question of law, upon which the opinion of the court might be taken by a demurrer, or a motion in arrest of judgment." CHAP.
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The jury retired, and after staying out many hours, having been brought in hackney coaches from Guildhall to Lord Mansfield's house in Bloomsbury Square,¹ the foreman gave their verdict in these words, "GUILTY of the printing and publishing ONLY."

In the ensuing term, cross-rules were obtained by the Attorney General and by the defendant to ascertain the legal result of this finding; the one contending that it amounted to a conviction, and the other to an acquittal. After the case had been very elaborately argued, Lord Mansfield said,—

"Had the verdict been simply 'guilty of printing and publishing,' we should have thought that it ought to be entered generally for the Crown; but we cannot exclude the word 'only,' and this appears to negative something charged in the information which the jury thought was submitted to them. Where there are more charges than one, 'guilty of some ONLY' is an acquittal as to the rest; but in this information there is no charge except for *printing and publishing*: clearly there can be no judgment of acquittal, because the fact found against the defendant by the jury is the very crime they had to try. That the law is as I stated to the jury has been so often unan-

1. Southampton Street leads from Oxford Street (left) into *Bloomsbury Square*, called Southampton Square when it was first built, in 1665, by Thomas Wriothesley, Earl of Southampton, father of Lady Rachel Russell. His house—Southampton House—occupied the whole north side of the square till 1800. In its early days this square was so fashionable that "foreign princes were carried to see Bloomsbury Square as one of the wonders of England."

"In Palace-yard, at nine, you'll find me there,

At ten, for certain, sir, in Bloomsbury Square."—*Pope*.

Among the residents in the square were the Earl of Chesterfield, Sir Hans Sloane, Lord Mansfield, and Dr. Radcliffe. Disraeli's "Curiosities of Literature" was written in No. 6. Richard Baxter lived in the square, and here his wife died June 14, 1681. On the north side is a seated statue (bronze) of Charles James Fox, by Westmacott.—*Hare's Walks in London*, vol. ii. p. 183.

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XXXVI. information as libellous which it could under no circumstances be criminal to publish, yet that an information may set out a paper the publication of which may or may not be criminal, according to the intention of the defendant and the circumstances under which it is published. Therefore, supposing judges to be ever so pure, upright, and intelligent, justice could not be done by leaving to them the criminality or innocence of the paper alleged to be libellous as a mere abstract question of law to be decided by reading the record. Nevertheless there were various authorities for the rule which Lord Mansfield had laid down; and, in laying it down, he not only followed the example of his immediate predecessors, but he was supported by the unanimous opinion of his brethren who sat by him. There was no pretence for representing him as a daring innovator, who, slavishly wishing to please the Government, tried to subvert trial by jury and to extinguish the liberty of the press. Nevertheless he was very generally believed to have acted corruptly,¹ and, having been

1. The perverted state of the public mind we may learn from Horace Walpole's "Memoirs of the Reign of George III.," which were written at the time, not for any factious purpose, but to remain unpublished till a future age, and which accordingly did not see the light till the year 1845: "Lord Mansfield endeavored, by the most arbitrary constructions, to mislead the jury, telling them that they had nothing to do with the *intention*, nor with the words in the indictment—*malicious, seditious*, &c. The despotic and Jesuitic judge went farther. He said the business of the jury was to consider whether the blanks were properly filled up. As to the contents of the paper, whether true or false, they were totally immaterial. No wonder juries were favorable to libellers when the option lay between encouraging abuse and torturing law to severe tyranny! It did the jury honor that they preferred liberty to the voice of the Inquisition. Not content with open violations of justice, he carried the jurors home with him, though without effect. What criminal could be more heinously guilty than such a judge?" (Vol. iv. p. 159, 160.) For the last insinuation,—that the judge, not being able to prevail upon the jury to find a false verdict in open court, carried them home with him to corrupt them by a good dinner and plenty of wine,—had this foundation, that the jury, having been locked up at

coarsely compared by vulgar vituperators to *Jeffreys* and *Scroggs*, he was thus addressed in more pointed, polished, and venomous terms by JUNIUS himself :

“ Our language has no term of reproach, the mind has no idea of detestation, which has not already been happily applied to you, and exhausted. Ample justice has been done by abler pens than mine to the separate merits of your life and character. Let it be *my* humble office to collect the scattered sweets till their united virtue tortures the sense.

Nov. 14,
1770.
Junius's
first letter
to Lord
Mansfield.

“ Permit me to begin with paying a just tribute to Scotch sincerity wherever I find it. I own I am not apt to confide in the professions of gentlemen of that country ; and, when they smile, I feel an involuntary emotion to guard myself against mischief. With this general opinion of an ancient nation, I always thought it much to your Lordship's honor that, in your earlier days, you were but little infected with the prudence of your country. You had some original attachments which you took every proper opportunity to acknowledge. The liberal spirit of youth prevailed over your native discretion. Your zeal in the cause of an unhappy prince was expressed with the sincerity of wine, and some of the solemnities of religion. This, I conceive, is the most amiable point of view in which your character has appeared. Like an honest man, you took that part in politics which might have been expected from your birth, education, country, and connections. There was something generous in your attachment to the banished House of Stuart. We lament the mistake of a good man, and do not begin to detest him until he affects to renounce his principles. Why did you not adhere to that loyalty you once professed ? Why did you not follow the example of your worthy brother ? With him you might have shared in the honor of the Pretender's confidence ; with him you might have preserved the integrity of your character ; and England, I think, might have spared you without regret. Your friends will say, perhaps, that although you deserted the fortune of your liege lord, you have adhered

Guildhall without meat, drink, or fire, till they had agreed on their verdict, were, according to the usual practice, which in this case was expressly sanctioned by the counsel on both sides, brought before the judge, to deliver it in his private apartments before the officers of the court and all who wished to be present.

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firmly to the principles which drove his father from the throne ; that, without openly supporting the person, you have done essential service to the cause, and consoled yourself for the loss of a favorite family by reviving and reëstablishing the maxims of their government. This is the way in which a Scotchman's understanding corrects the error of his heart. My Lord, I acknowledge the truth of the defence, and can trace it through all your conduct. I see, through your whole life, one uniform plan to enlarge the power of the Crown at the expense of the liberty of the subject."

After specifying at very great length the supposed enormities of the Chief Justice in the prosecution of his plan, the writer comes to the recent trials for publishing his own letter to the King :

"Here, my Lord, you have fortune on your side. When you invade the province of the jury in matter of libel, you in effect attack the liberty of the press ; and, with a single stroke, wound two of your greatest enemies. In other criminal prosecutions the malice of the design is confessedly as much the subject of consideration to a jury as the certainty of the fact. If a different doctrine prevails in the case of libels, why should it not extend to all criminal cases ? why not to capital offences ? I see no reason (and I dare say you will agree with me that there is no good one) why the life of the subject should be better protected against you than his liberty or property. Why should you enjoy the full power of pillory, fine, and imprisonment, and not be indulged with hanging or transportation ?"

Having amply discussed this legal question and several others, he makes the following observations on Lord Mansfield's political position, which we shall see had a speedy influence upon ministerial arrangements :

"Yet you continue to support an Administration which you know is universally odious, and which on some occasions you yourself speak of with contempt. You would fain be thought to take no share in government, while in reality you are the mainspring of the machine. Here, too, we trace the *little*, prudential policy of a Scotchman. Instead of acting that open, generous part which becomes your rank and station,

you meanly skulk into the closet, and give your Sovereign such advice as you have not spirit to avow or defend. You secretly ingross the power while you decline the title of minister; and though you dare not be Chancellor, you know how to secure the emoluments of the office. Are the seals to be forever in commission that you may enjoy five thousand pounds a year?"

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The writer concludes with strongly advising Lord Mansfield not to make this letter the subject of criminal informations, like his letter to the King, as "the prosecution of an innocent printer cannot alter facts nor refute arguments."

De Grey, the Attorney General, was eager for proceeding *ex officio* against the DAILY ADVERTISER, and all the newspapers which had copied this audacious invective against the Chief Justice, urging that the administration of the laws must speedily come to an end if the first magistrate in Westminster Hall could be thus insulted on his tribunal with impunity. The Chief Justice himself, however, thought it more discreet to avoid a personal conflict, and not to keep alive the topics respecting his early history and political career which JUNIUS had so cunningly and invidiously introduced. He declared, therefore, "that he would confide in the good sense of the public and the internal evidence of his conscience."

But he felt the scandal of his remaining so long Speaker of the House of Lords, with a high salary, in addition to that of Chief Justice, and of keeping the seals in commission for a longer time than had been known since the reign of William III. The difficulty was to find a Chancellor. The fittest man would have been Dunning, who had accepted the office of Solicitor General under the Duke of Grafton; but he was known to be an enemy both to the Chief Justice and to his principles.

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Attacks
upon Lord
Mansfield
in Parlia-
ment.
Dec. 6,
1770.

These perplexities were increased by his alleged encroachment on the rights of juries being brought before parliament. Serjeant Glyn made a motion in the House of Commons for "a committee to inquire into the proceedings of the judges in Westminster Hall, particularly in cases relating to the liberty of the press";—when, in the course of a long debate, the conduct of the Chief Justice was severely censured not only by the mover but by Dunning and Burke, while it was stoutly defended by De Grey the Attorney General, Thurlow¹ the Solicitor General, and Charles Fox, still a courtier.²

In the House of Lords there was a close compact between Lord Chatham and Lord Camden against Lord Mansfield; and he had no one to give him the slightest assistance in debate, although on a division he had numbers on his side. In the course of a renewed discussion which now took place on the Middlesex election, Lord Chatham "made a digression upon the modern manner of directing a jury from the bench, and giving judgment upon prosecutions for libels."³

His suc-
cessful
defence of
himself.

Lord Mansfield: "It is extremely painful, my Lords, where a man is publicly attacked, not only to have prejudice to con-

1. Edward Thurlow, Lord Thurlow, was the second son of the Rev. Thomas Thurlow, rector of Ashfield, Suffolk, and born there about 1732. He became a student at Caius College, Cambridge; on leaving which he entered at the Middle Temple, and in 1758 was called to the bar, where he gained such credit in the Douglas cause as to be made king's counsel. In 1770 he was appointed Solicitor General, and the year following Attorney General, on which he was returned to parliament for Tamworth. In 1778 he became Chancellor, and was raised to the peerage. He resigned the seals in April, 1783, but resumed them again on the dissolution of the coalition administration, a few months afterwards, and held them till 1792, when he retired from office, and received a new patent of peerage, extending the title to his nephews. Died Sept. 12, 1806. Lord Thurlow was a man of stern manners, but of inflexible integrity.—*Cooper's Biog. Dict.*

2. 16 Parl. Hist. 1211–1302.

3. Ibid. 1302. We only learn the particulars of the charge from the answer, which is given at length.

tend with, but ignorance ; I say *ignorance*, because, highly as I respect the abilities of my accuser in other matters, this is a point on which he is entirely destitute of information ; indeed, so destitute that, were I not apprehensive my silence might be liable to misconstruction, I should not have distinguished him with the attention of a reply. The noble Lord is pleased to say that the constitution of the country has not only been wounded in the House of Commons in the material right of election, but in the Court of King's Bench by the immediate dispensers of the law. His Lordship tells the House that doctrines no less new than dangerous have been inculcated in this court, and that particularly in a charge which I delivered to the jury on Mr. Woodfall's trial my directions were contrary to law, repugnant to practice, and injurious to the dearest liberties of the people. This is an alarming picture, my Lords ; it is drawn with great parade, and colored to affect the passions amazingly. Unhappily, however, for the painter, it wants the essential circumstance of truth in the design, and must, like many other political pictures, be thrown, notwithstanding the reputation of the artist, among the miserable daubings of faction. So far, my Lords, is the accusation without truth that the directions now given to juries are the same that they have ever been. There is no novelty introduced,—no chicanery attempted ; nor has there till very lately been any complaint of the integrity of the King's Bench. When, indeed, the abettors of sedition found that the judges were neither to be flattered from their duty by fulsome adulation, nor intimidated by the daring voice of licentiousness—when they found that Justice was not afraid of drawing her sword against the greatest favorite of an inconsiderate multitude—they had no resource but to impeach the probity of her ministers : to acknowledge the equity of any sentence against themselves would be to give up their pretensions to patriotism. What, therefore, was to be done ? To traduce the judges,—to represent them as the servile tools of every arbitrary minister,—to hold out every criminal as a martyr to the public good, and to excite a general abhorrence of all legal subordination."

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Having vindicated himself at great length by a review of the authorities and arguments connected with

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the case, he said he had directed juries in the same manner for fourteen years, without any objection being made to the rule he laid down, although he had often requested that if any doubt existed the opinion of a higher court might be taken. He thus concluded :

“ Judges, my Lords, cannot go astray from the express and known law of the land. They are bound by oath punctually to follow the law. I have ever made it the rule of my conduct to do what was just ; and, conscious of my own integrity, am able to look with contempt upon libels and libellers. Before the noble Lord, therefore, arraigns my judicial character, he should make himself acquainted with facts. The scurrility of a newspaper may be good information for a coffee-house politician ; but a peer of parliament should always speak from higher authority : though if my noble accuser is no more acquainted with the principles of law in the present point than in what he advanced to support the motion where he told us *an action would lie against the House of Commons for expelling Mr. Wilkes*, I am fearful the highest authorities will not extend his ideas of jurisprudence nor entitle him to a patient hearing upon a legal question in this assembly.”

Lord Chatham tried to reply, but could make nothing of his action for damages against the House of Commons, and was obliged to retreat upon the Middlesex election, which he said “ he should consider the alarm-bell of liberty ; ringing it incessantly till he roused the people to a proper sense of their injuries.”

Lord Camden then came to the rescue, and gave a flagrant instance of the little reliance to be placed on the law laid down in debate by experienced lawyers ; for he stoutly argued that the action against the House of Commons might be maintained :

“ The noble and learned Lord on the woolsack has been pleased to sneer at my illustrious friend on account of his unacquaintance with the law in saying that ‘ an action for damages lies against the House of Commons for disfranchising the county of Middlesex.’ The noble and learned Lord, however,

triumphs without a victory. If he supposes the laws of this country founded on justice, he must acknowledge the propriety of the very observation which excites his ridicule. Will he venture to say that, in seating Colonel Luttrell, the freeholders have not been grossly and dangerously injured? Will he venture to say that, being injured, they have not a legal claim to redress?—a title to compensation at the hands of a jury for the wrong they have sustained? He knows they have; he cannot deny their claim, unless he places the simple resolution of the other House entirely above the established law of the land, and tells us that the lowest estate of parliament is constitutionally warranted to annihilate the constitution. With respect to the direction of the noble and learned Lord on the woolsack which my illustrious friend has referred to, I think it would be premature to give any opinion till we have it before us. If we can obtain this direction, and obtain it fully, I shall very readily deliver my opinion upon the doctrines it inculcates; and if they appear to me contrary to the known and established principles of the constitution, I shall not scruple to tell the author of his mistake boldly and openly in the face of this assembly."

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A motion of adjournment made by the Duke of Grafton, as the organ of the Government, was carried by a large majority.¹ All present felt that Lord Mansfield had decidedly the advantage in this encounter, and that he had only to enjoy his victory. He wisely remained silent for the rest of the evening; but, elated with the compliments he received in Westminster Hall, he next day intimated that he had something of importance to bring to the notice of the House, and moved that their Lordships should be summoned to receive the communication.

Lord
Mansfield's
subsequent
indiscre-
tion and
cowardice
in his con-
test with
Lord
Camden.
Dec. 11,
1770.

On the appointed day there was an unusually large attendance of Peers. It was generally believed that the Lord Chief Justice was going to move a vote of censure on Lord Chatham and Lord Camden for calumniating the Judges, and the coming passage of arms

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between them was expected to be more dazzling than any ever before witnessed. But, oh ! miserable disappointment ! After a long pause, during which all eyes were fixed upon Lord Mansfield, he at last rose and said,—“ My Lords, I have left a paper with the clerk-assistant of this House, containing the judgment of the Court of King’s Bench in the case of *The King against Woodfall*, and any of your Lordships who may be so inclined may read it and take copies of it.” To the astonishment of the audience, he resumed his seat without making any motion or uttering a syllable more.

Lord Camden : “ Does the noble and learned Lord on the woolsack mean to have his paper entered on the journals, or to found any motion upon it hereafter ? ”

Lord Mansfield : “ No, no ! Only to leave it with the clerk.”

The House then proceeded to other business ; and some Peers who had a curiosity to know the contents of Lord Mansfield’s paper found it entitled, “ Copy of the unanimous Opinion of the Court of King’s Bench in the case of the King against Woodfall, and read by the Lord Chief Justice on the 20th of November, 1770.”

Next day, at the sitting of the House, Lord Camden said,—

“ My Lords, I consider the paper delivered in by the noble and learned Lord on the woolsack as a challenge directed personally to me, and I accept it ; he has thrown down the gauntlet, and I take it up. In direct contradiction to him I maintain that his doctrine is not the law of England. I am ready to enter into the debate whenever the noble Lord will fix a day for it. I desire and insist that it may be an early one. Meanwhile, my Lords, I must observe that, after having considered the *paper* with the utmost care, I have not found it very intelligible. There is one sense of the words in which I might agree ; but there is another sense which may be imputed

to them, and which they naturally bear. If this be what the noble and learned Lord will stand by, I am ready to prove it illegal and unconstitutional. I therefore beg leave to propose the following questions to the noble and learned Lord, to which I require categorical answers, that we may know precisely the points we are to discuss :

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" 1. Does the Opinion mean to declare that upon the general issue of *not guilty*, in the case of a seditious libel, the jury have no right by law to examine the innocence or criminality of the paper if they think fit, and to form their verdict upon such examination ?

" 2. Does the Opinion mean to declare that in the case above mentioned, where the jury have delivered in their verdict *guilty*, this verdict has found the fact only, and not the law ?

" 3. Is it to be understood by this opinion that if the jury come to the bar and say that they find the printing and publishing, but that the paper is no libel, the jury are to be taken to have found the defendant guilty generally, and the verdict must be so entered up ?

" 4. Whether the Opinion means to say that if the judge, after giving his opinion of the innocence or criminality of the paper, should leave the consideration of that matter, together with the printing and publishing, to the jury, such a direction would be contrary to law ? "

Lord Mansfield (looking very unhappy) : " I have the highest esteem for the noble and learned Lord who thus attacks me, and I have ever courted his esteem in return. From his candor I had not expected this treatment.¹ I have studied the point more than any other in my life, and have consulted all the Judges on it except the noble and learned Lord, who appears to view it differently from all others. But this mode of questioning me takes me by surprise. It is unfair. I will not answer interrogatories."

Lord Chatham : "' *Interrogatories* !' Was ever anything heard so extraordinary ? Can the noble and learned Lord on the woolsack be taken by surprise when, as he tells us, he has been considering the point all his life, and has taken the opinions of all the Judges upon it ? "

1. Horace Walpole says, " Lord Mansfield, with most abject soothings, paid the highest compliments to Lord Camden."—*Mem. Geo. III.* vol. iv. p. 220.

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Lord Camden : "I am willing that the noble and learned Lord on the woolsack should have whatever time he deems requisite to prepare himself, but let him name a day when his answers may be given in, and I shall then be ready to meet him."

Lord Mansfield : "I am not bound to answer, and I will not answer, the questions which the noble and learned Lord has so astutely framed and so irregularly administered ; but I pledge myself that the matter shall be discussed."

Duke of Richmond : "I congratulate your Lordships upon the noble and learned Chief Justice of the King's Bench having at last pledged himself to the point."

Lord Mansfield (much embarrassed) : "My Lords, I did not pledge myself to any particular point ; I only said I should hereafter give my opinion. And as to fixing a day, I said, 'No ! I will not fix a day.'"¹

He seemed so much distressed that the matter was here allowed to drop, and it never was resumed.²

Next morning Lord Chatham sent a note to Lord Camden, complimenting him on his *transcendent doing*, inquiring after his health, and adding, "I think I ought rather to inquire how Lord Mansfield does."³

There is no denying that "the noble and learned Lord on the woolsack" did on this occasion show a great want of moral courage, and an utter forgetfulness of the excellent precept of Polonius,—*"Beware of entrance to a quarrel : but, being in, bear it that the opposer may beware of thee."*

Lord
Mansfield
gives the
great seal
to Lord
Bathurst.

All felt that a new disposition of the great seal could be delayed no longer, and, *à pis aller*, it was given to Mr. Justice Bathurst with the title of CHANCELLOR. Although the remark made might have been anticipated,—*"that the three Commissioners were allowed to*

1. 16 Parl. Hist. 1321; Walp. Mem. Geo. III. vol. iv. p. 220-225.

2. Horace Walpole, who witnessed the scene, says : "The dismay and confusion of Lord Mansfield was obvious to the whole audience : nor did one peer interpose a syllable in his behalf."

3. Original letter furnished to me by the present Marquess Camden.

be incompetent, and the whole business of the office was thrown on the most incompetent of the three,"—
 I am afraid that Lord Mansfield was not sorry to see the woolsack so occupied, hoping that his own ascendancy, as the only great Tory law lord, might remain undiminished.

However, his position there seems to have become very uncomfortable, and I can find no trace of any speech delivered by him in parliament for above four years. He was unable single-handed to cope with the formidable league of Lord Chatham and Lord Camden, assisted by the Duke of Richmond and other allies; and he must have regretted the short-sighted policy of choosing such a weak man for Chancellor as Lord Bathurst, who was incapable of giving him any aid or countenance.

JUNIUS, from the acquittal of the printers till the beginning of the year 1772, when he made a treaty with the Government and forever disappeared, exercised a tyranny of which we can form little conception, living in an age when the press is more decorous, and we are able by law to restrain its excesses.

I may refresh the recollection of the reader by copying a few of the passages in which the victorious libeller seeks to revenge himself on Lord Mansfield for the vain attempt to bring him to justice. Thus, in the letter to the Duke of Grafton, describing the destitute condition of his Grace's party,—having said that "Charles Fox was yet in blossom," and that "Wedderburn¹ had something about him which treachery could

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New at-
tacks on
Lord
Mansfield
by JUNIUS.

1. Alexander Wedderburn (Lord Loughborough, Earl of Rosslyn) is another example of a political Chancellor who, although he was gifted with great talents, and possessed many accomplishments and undoubted eloquence, failed to gain the respect of either party in the state, because he was "everything by turns," and his own interests and advancement seemed to prompt his various tergiversations.

CHAP. not trust,"—he observes, "Lord Mansfield shrinks
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He was born at Edinburgh on February 13, 1733, and commenced his education at a school at Dalkeith, finishing it at the University of Edinburgh, through which he passed with great distinction. He naturally selected the law as his profession, and applied himself so successfully to the study of civil law and municipal jurisprudence that he was admitted a member of the faculty of advocates in June, 1754, being then only twenty-one. Before he took this step he had shown a strong inclination to the English bar by entering himself at the Inner Temple on May 8, 1753, and keeping his terms there. He was, however, persuaded to try his fortune at the Scottish bar, as his father's present position at it, and still more his elevation in 1755 to the Scottish bench, seemed to promise prosperous results. The early death of the new lord in the next year would have dissipated those hopes had not the young man attained a certain eminence among his colleagues by his association with the literati of his country, and by his connection with the general assembly of the Church of Scotland. About a year after his father's death he left Scotland, to which he never returned, and was called to the English bar four months afterwards, on November 25, 1757. During the first months after his arrival in London he applied himself, under the instruction of the elder Sheridan and Macklin, to the study of English pronunciation, with such effect that the peculiarities of the Scottish accent were almost entirely eradicated. Through this theatrical connection he obtained the early business he had; but among his Scotch friends was the Earl of Bute, who had belonged to the "Select Society" in Edinburgh, and under his patronage he became member of the burghs of Ayr, etc., in the first parliament of George III. In allusion to his histrionic alliances and senatorial efforts, Churchill introduced him into the "Rosciad," in a most severe passage, inserted in 1763, showing that even at that early period those unfortunate characteristics were visible which were attributed to him throughout his career. Becoming a member of a club of literary natives of Scotland which met at the British Coffee-house in Cockspur Street, to which many Englishmen were soon admitted, his success was gradually forwarded by the influence of his associates. But still his business was so small that lawyers were astonished at his boldness in accepting a silk gown soon after his patron Lord Bute became Prime Minister. He received a patent of precedence in Hilary Term, 1763. He now selected the Northern Circuit, from which its leader Sir Fletcher Norton had just retired, and in London attached himself to the Court of Chancery, where, and in the House of Lords upon Scotch appeals, he achieved great success. He was remarkable for the clearness of his statements and for the subtilty of his arguments, and he particularly shone in the great Douglas cause. his speech in which was universally admired. In the House of Commons, to which he was returned to the new parliament of 1768 as member for Richmond, he displayed similar efficiency. After Lord Bute's

from his principles; his ideas of government perhaps
go farther than your own; but his heart disgraces the

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retirement Wedderburn, from being one of the "King's friends," assumed the character of a "patriot," strenuously defending Wilkes and taking the part of the Americans. For his conduct with regard to the former he felt himself in March, 1769, obliged to vacate his seat for Richmond, which had been given to him as a Tory, but was returned as a Whig in the following January for Bishop's Castle in Shropshire. This seat he owed to the gratitude of Lord Clive for his eloquent and earnest defence of him, which his lordship further exhibited by a munificent present of a mansion at Mitcham. His secession from the court party was hailed by the oppositionists with a complimentary dinner, and his subsequent efforts on that side were rewarded by the freedom of the city of London and the plaudits of Lord Chatham. Wedderburn continued his patriotic exhibitions during the first year of Lord North's ministry, personally pitting himself against that nobleman, and exposing with great eloquence and power all his measures. Towards the end, however, of that year he was evidently laying himself out for a junction with the minister; and to the infinite disgust of all, but to the surprise of few, on the meeting of parliament on January 25, 1771, he was gazetted as Solicitor General, bound to support all he had so recently and earnestly resisted. Well might Junius say of him, "As for Wedderburn, there is something about him which even treachery cannot trust." Yet, notwithstanding this decided opinion and various similar expressions by this extraordinary writer with regard to Wedderburn, there were some who attributed to him the authorship of Junius's Letters, a notion which could have no foundation except in the elegance and force of his style, and which no one who investigates the subject can possibly support. Braving the sneers of the opposition bench, he soon, by his admirable tact and insinuating eloquence, recovered his ascendancy in the House. In 1774 he pronounced the tremendous invective against Franklin before the privy council which increased the exasperation of the Americans, and assisted in stirring up the civil war, in the progress of which he gave the most unflinching support to the ministers, with undaunted front defending them from the attacks of the opposition. But he could not yet make himself happy in his position. He fancied that his services were insufficiently appreciated, and that he was neglected by Lord North; yet when he was offered the chief barony of the Exchequer at the end of 1777 he refused it unless it was accompanied by "a place in the legislature," and talked of taking an "opportunity of extricating" himself from office. As ministers had some experience of his dexterity in shifting the scene, means were taken to quiet his impatience, and in the following June he became Attorney General. He occupied this post for just two years, and on June 14, 1780, his longing for promotion and peerage was gratified by

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theory of his understanding."¹ Commenting on Lord Mansfield's compliment to Lord Chatham for supporting the right of impressment, which he imputes to a design of injuring the great patriot, he says, "He knew the doctrine was unpopular, and was eager to fix it upon the man who is the first object of his fear and detestation. The cunning Scotchman never speaks truth without a fraudulent design. In council he generally affects to take a moderate part. Besides his natural timidity, it makes part of his political plan never to be known to recommend violent measures. When the guards are called forth to murder their fellow-subjects, it is not by the ostensible advice of Lord Mansfield. Who attacks the liberty of the press? Lord Mansfield! Who invades the constitutional powers of juries? Lord Mansfield! Who was that judge who, to save the King's brother, affirmed that a man of the first rank and quality, who obtains a verdict in a suit for criminal conversation, is entitled to no greater damages than the meanest mechanic? Lord Mansfield! Who is it makes Commissioners of the Great Seal? Lord Mansfield! Who is it frames a

the appointment of Chief Justice of the Common Pleas and by being created Baron Loughborough. During the whole period of his holding office he had been a most zealous and effective supporter of the ministerial measures, charming the House by his sarcasm and his wit, as well as leading it by the force and eloquence of his advocacy. Professionally he continued to distinguish himself by his industry and management. His speech on the prosecution of the Duchess of Kingston is an admired specimen of his forensic excellence, remarkable for clear and close argument and lucid arrangement. In his last act as Attorney General he has the credit of being the first to put an effectual stop to the No Popery riots by the advice he gave to the privy council that the military might act without regard to the Riot Act. He became Lord Chancellor on January 28, 1793, and kept his seat till April 14, 1801, a month after the termination of Mr. Pitt's first administration. The earl died suddenly at his house at Baylis, between Slough and Salt Hill, on January 2, 1805. His remains were deposited in the crypt of St. Paul's.—*Foss's Lives of the Judges*.

1. June 22, 1771.

decree for these Commissioners deciding against Lord Chatham?¹ Lord Mansfield! Compared to these enormities, his original attachment to the Pretender (to whom his dearest brother was confidential secretary) is a virtue of the first magnitude. But the hour of impeachment *will* come, and neither he nor Grafton shall escape me."² Then arose the grand controversy about Lord Mansfield's power to bail Eyre, charged with theft, in which JUNIUS was egregiously in the wrong—clearly showing that he was not a lawyer, his mistakes not being designedly made for disguise, but palpably proceeding from an ignorant man affecting knowledge. Thus he urges Lord Camden, whom he accuses of remissness, to prosecute and to punish the delinquent Judge: "When the contest turns upon the interpretations of the laws, you cannot, without a formal surrender of all your reputation, yield the post of honor even to Lord Chatham. Considering the situation and abilities of Lord Mansfield, I do not scruple to affirm, with the most solemn appeal to God for my sincerity, that, in my judgment, he is the worst and most dangerous man in the kingdom. Thus far I have done my duty in endeavoring to bring him to punishment. But mine is an inferior ministerial office in the temple of justice. I have bound the victim and dragged him to the altar."³

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There were many consultations between Lord Mansfield and his friends how these atrocious libels should be dealt with. Sir Fletcher Norton⁴ strongly recommended a prosecution, and even a summary application

1. Alluding to an absurd calumny that a wrong decision of the Lords Commissioners about the Pynzant estate, afterwards reversed in the House of Lords, was maliciously framed by Lord Mansfield.

2. October 5, 1771.

3. January, 1772.

4. Grantley Fletcher, Lord Norton (*b.* 1716, *d.* 1789), was born at Grantley, near Ripon. After being called to the bar he was in turn

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to commit the printer, and the author if he could be got at, for a contempt of court; but this advice was rejected, being supposed to be prompted by a desire to bring the party libelled into greater disgrace, so that he might be forced to resign, and that the adviser, who had for many years been impatient to be put on the bench (although he never accomplished his object), might succeed to the vacant Chief Justiceship. There appeared in the DAILY ADVERTISER a very able paper, signed ZENO, in defence of Lord Mansfield against all the charges JUNIUS had brought against him, which was supposed to have been written by Lord Mansfield himself; but it only drew forth a more scurrilous diatribe in the shape of a letter to ZENO from PHILO-JUNIUS,—and all hope of refuting or punishing him was abandoned as hopeless. At last “the great boar of the forest,” who had gored the King and almost all his Court, and seemed to be more formidable than any “blatant beast,” was conquered,—not by the spear of a knight-errant, but by a little provender held out to him, and he was sent to whet his tusks in a distant land.

JUNIUS
at last
silenced

This certainly was a very great deliverance for Lord Mansfield, who had long been afraid at breakfast to look into the DAILY ADVERTISER, lest he should find in it

appointed king's counsel, Attorney General for the County Palatine of Lancaster, and Solicitor General. In 1763 he became Attorney General, but went out with the Grenville ministry in 1765. While in that office he had to encounter the difficult question of general warrants; and his impetuous recklessness did not smooth the way for his colleagues. Upon the resignation, in 1769, of the chair of the House of Commons by Sir John Cust, Sir Fletcher was elected to fill the vacancy. Through the excited years of Lord North's administration Norton filled the office of Speaker with some ability and a fearless indifference to consequences. In 1780 he paid the penalty of his independence by being dismissed from the chair. When, in 1782, the Marquis of Rockingham came into power, Sir Fletcher Norton was raised to the peerage, with the title of Baron Grantley. —*Dict. of Eng. Hist.*

some new accusation, which he could neither passively submit to nor resent without discredit ; and although he might call the mixture of bad law and tumid language poured out upon him *ribaldry*, it had an evident effect in encouraging his opponents in parliament, and in causing shakes of the head, shrugs of the shoulders, smiles and whispers in private society, which could not escape his notice.

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CHAPTER XXXVII.

CONTINUATION OF THE LIFE OF LORD MANSFIELD
TILL THE DEATH OF LORD CHATHAM.

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A.D. 1772
-1774-

THE excessive violence of the attacks upon Lord Mansfield by JUNIUS had made their effect more transitory, and they were gradually forgotten amidst a succession of stirring events at home and abroad.

Lord
Mansfield
visits Paris.

In the autumn of 1774 he paid a visit to Paris, where his nephew, Lord Stormont, had by his interest been appointed ambassador, and had shown great energy in counteracting the intrigues of the Duke d'Augillon for French aggrandizement. Louis XVI.¹ had just commenced his inauspicious reign, and many other distinguished Englishmen had come over to wit-

1. Louis XVI. (b. 1754, d. 1793) succeeded his father, Louis XV., in 1774. In 1770 he had married Marie Antoinette, daughter of Maria Theresa of Austria. The finances were in complete disorder, and Louis was not fortunate in his choice of ministers. Turgot and Necker were in turn dismissed, and succeeded by the incapable Calonne (1783-7) and Loménie de Brienne (1787-8). Necker was recalled, and advised the summoning of the States General (May, 1789), who were reconstituted as the National Assembly. The dismissal of Necker was followed by the taking of the Bastille (July 14). In October a mob of armed women from Paris made an attack on the palace of Versailles, after which the King and Queen were forcibly removed to Paris. In February, 1790, a new constitution was issued, which the King found himself forced to accept. In June, 1791, Louis attempted to escape from France, but was arrested at Varennes and taken back to Paris. During the attack on the Tuileries (August, 1792) Louis fled to the Assembly, by whose order he was imprisoned, with his family, in the Temple. The Convention met in September; Louis was brought to trial, and ably defended by Malesherbes, but condemned to death, and executed on January 21, 1793.—*Cassell's Biog. Dict.*

ness the festivities in honor of his accession. Lord Mansfield was presented to the King and to the young Queen,¹ still "glittering like the morning star, full of life and splendor and joy." He was treated by both of them with marked civility; for his reputation as a great magistrate had spread over Europe, and his noble appearance and manners added to the interest which this had excited.² Amidst the splendors of his reception at Versailles,³ little did he think he should live to

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1. Marie Antoinette, Joséphe Jeanne de Lorraine, Queen of France, born in Vienna November 2, 1755, executed in Paris October 16, 1793. She was the youngest daughter of the Emperor Francis I. (who died in 1765) and Maria Theresa. Her marriage with the French Dauphin, the future Louis XVI., was early determined upon by her mother, with a view of strengthening Austria against Prussia. She went to France in her fifteenth year, and was enthusiastically received all along the journey, and especially at Strasburg by the Prince de Rohan, then coadjutor of his uncle the cardinal who afterward, as ambassador in Vienna, shocked Maria Theresa by his levity and dissipation, and who subsequently, while cardinal and royal chaplain, implicated Marie Antoinette in the affair of the diamond necklace. Her marriage with the Dauphin was celebrated at Versailles May 16, 1770, and she became Queen four years later. She was much calumniated, and became unpopular with the court and people as a foreigner. She fled with the King to Varennes in June, 1791, and a year after was imprisoned with him, being finally tried and guillotined in October, 1793.—*Chalmer's Biog. Dict.*

2. He was so much pleased with the recollection of this scene that on his return he had his portrait painted in the costume which he then wore.

3. Versailles, a city of France, ten miles southwest of the centre of Paris. It derives its celebrity from the royal palace built by Louis XIV. on the site of Louis XIII.'s hunting-lodge, where that monarch and his successors resided till the Revolution. The marble court and the interior are remarkable for extraordinary magnificence and grandeur, especially the vast museums or galleries, with statues and pictures of the great historical personages and events of the country. Connected with the palace are chapels, an extensive library, and magnificent gardens where fountains playing on Sundays attract multitudes of visitors from Paris. Louis XV. added the theatre and other buildings. The park connects with the Grand Trianon and the Petit Trianon palaces; the latter was the favorite residence of Marie Antoinette. The most brilliant periods of the reigns of Louis XIV. and Louis XV., as well as the beginning of the catastrophe under Louis XVI., are associated with the residence of those monarchs at Versailles. The definitive treaty which terminated the

CHAP. XXXVII. hear the tidings of Louis and Marie Antoinette losing their heads on the scaffold.

Now was the city of London convulsed by the dispute respecting the publication of parliamentary debates,—in the course of which the messenger of the House was committed to Newgate, and the Lord Mayor to the Tower. Events of stupendous magnitude were taking place in the East Indies, where a mercantile company, at first content with a storehouse in which they might expose their wares to sale, had become masters of a mighty empire. But it was America that chiefly absorbed the public attention. The scheme of taxing the colonies had been insanely resumed; Franklin⁴ had been insulted by Wedderburn; there had

Progress
of the dis-
putes with
America.

American struggle for independence was concluded here Sept. 3, 1783, and the states general were opened here May 5, 1789. Napoleon I., Louis XVIII., and Charles X. attempted to repair the damage inflicted upon the palace during the Revolution, and under Louis Philippe it was fully restored. During the Franco-German war of 1870 Versailles became the headquarters of the Germans; the King of Prussia was proclaimed here (in the palace) Emperor of Germany Jan. 18, 1871; the capitulation of Paris was concluded here ten days later, and the preliminary treaty of peace on Feb. 26, and the national assembly and seat of government were removed hither from Bordeaux. Many prisoners were transferred to Versailles during the war with the commune, and shot in the neighboring plain of Satory. The constitutional provisions of Feb., 1875, made Versailles the legal capital, though it is practically only the seat of the senate and assembly, which occupy chambers in the palace.—*Appl. Encyc.* xvi. p. 324.

4. Benjamin Franklin, born in Boston, Massachusetts, January 6, 1706; died on April 17, 1790. The name of Dr. Franklin has long been an household word in America,—he was her moralist, statesman, and philosopher; his discoveries in electricity have given him a permanent place in scientific history; and he deserves highest honor from all mankind because of his services to the cause of rational liberty and the independence of nations.—We must omit all details concerning Franklin's early life: however, if any one would sustain hope amid unpromising labor, discern the inestimable value of small portions of time economized and put scrupulously to uses, or learn how cheerfulness, patience, and fortitude, guided by good sense and integrity, must ever command success, he will find nowhere better instruction than in that graphic narrative of the events and struggles of his opening manhood by which Franklin has let us

been riots at Boston; coercion had been tried in vain; a general spirit of resistance manifested itself from the

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into the innermost being of the journeyman printer of Philadelphia. Distinguished no less by practical benevolence than by an almost intuitive appreciation of the wants and character of early American society, Franklin could not fail to rise into authority among his countrymen: accordingly we find him their favorite counsellor in most of the grave difficulties belonging to that epoch of American history. Commencing public life in the struggle between the assembly of Pennsylvania and the old proprietary governors, we again meet him proposing to the different States a project of union which afterwards became the basis of the confederacy; then on a mission to England regarding the American Stamp Act; afterwards—driven from his loyalty—Ambassador to France on the part of his countrymen; the observed of all observers in Paris, soliciting aid in arms from the court of Versailles; finally Minister to England, signing the treaty by which the mother country, in due humiliation, bowed her head before the independence of her former colonies.—It has been said that Franklin represented the practical genius, the moral and political spirit, of the eighteenth century, as Voltaire represented its metaphysical and religious skepticism: this, at least, is certain,—no man saw more clearly, or felt more profoundly in his own person, the political and moral ideas which necessarily bear sway in a strictly industrial community like the one emerging from infancy in the New World. Unconnected with England by birth or close association, he looked only with astonishment on those pretensions to prerogative which certainly could find no natural soil where all men were socially equal; and his system of morals included every sanction and precept likely to recommend themselves to a people who could never reach prosperity unless through patient industry and the exercise of the prudential virtues. His code was “The Way to Wealth”; and the wisdom of “Poor Richard” instructed every man how, by the strength of his arm and dominion over his passions, wealth might be attained and made secure. Since Franklin’s time a new element has arisen in America; powerful tendencies are developing with higher aims than mere wealth, and which demand a larger code than the utilitarian. Franklin did not recognize, or rather had not foreseen, the necessary advent of that speculative habit now very rapidly becoming dominant over American thought; but in his treatment of the equally powerful tendency of which he saw the influence, and whereof he himself so largely partook, his “Poor Richard” is complete: he threw off all prerogative and tradition, and looked at things as they are. Temperance, silence, order, resolution, frugality, activity, sincerity, justice, moderation, cleanliness, tranquillity, chastity, humility,—these are his virtues; and Franklin teaches how to acquire them by precepts which in earlier times would have ranked as *golden verses*; they are as valuable as anything that has descended from Pythagoras.—It is rare that a single mind establishes claims so various as those of

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St. Lawrence to the Mississippi,—and civil war was impending. The paltry squabbles for place which had prevailed since the resignation of Lord Bute, till the appointment of Lord North as minister, were forgotten; and the leaders of all parties, animated by nobler thoughts, deliberated upon the measures by which a sinking state might be saved from perdition. Lord Mansfield resumed his position as a political leader, and was again the chief organ of the Government in the House of Lords. Lord Bathurst, the Chancellor, seldom spoke, and never with effect. The other holders of office in the Upper House were Lord Sandwich, Lord Hillsborough, Lord Gower, and Lord Dartmouth, who were respectable in debate, but very inferior to the occupiers of the opposition bench, Lord Chatham, Lord Rockingham, Lord Camden, and Lord Shelburne.¹ On

Franklin: he ranks also among the foremost as a physical inquirer and discoverer. Attracted by the opening subject of *electricity*, he was the first who reduced it to order; and that grand step is owing to him which identified the attraction and repulsion of rubbed glass and amber with the energy that produces lightning and causes the most imposing of meteorological phenomena. His memoirs on electricity and other physical subjects still astonish one by their clearness and chastity, and the precision and elegance of their method; their style and manner are as worthy of admiration as their doctrines. They gained for the author immediate admission to the highest scientific societies in Europe.—In his personal bearing Franklin was sedate and weighty. He had no striking eloquence; he spoke sententiously; but men instinctively felt his worth and submitted themselves to his wisdom. Except Washington, whom in many qualities he much resembled, the New World yet ranks among her dead nowhere so great a man. An edition of his works in ten volumes has recently been published by *Jared Sparks*, the excellent editor of the writings of Washington.—*Cycl. Univ. Biog.*

1. William Petty, first Marquis of Lansdowne, better known as the Earl of Shelburne, a British statesman, born 1737, died 1805. In early life he entered the army, and served with distinction under Prince Ferdinand in the Seven Years' War. Upon the death of his father in 1761 he took his seat in the House of Lords; and upon the formation of the Grenville ministry in April, 1763, he was appointed President of the Board of Trade, with a seat in the cabinet, although he was not then twenty-six years of age. In this capacity he distinguished himself by a conciliatory policy toward America, and by

the one side the only hope held out was from determination, vigor, and severity; while the other clung to gentleness, confidence, and conciliation,—without as yet for a moment admitting the possibility that the mother country could be reduced to the necessity of renouncing her sovereignty over her transatlantic colonies.

The first occasion when Lord Mansfield appeared as leader in this memorable struggle was upon the motion to agree to a joint address of both Houses to the King, “lamenting the disturbances which had broken out in the province of Massachusetts, beseeching his Majesty to take the most effectual measures for enforcing due obedience to the laws and the authority of the supreme legislature, and assuring him of their resolution to stand by him at the hazard of their lives and fortunes.”¹

his opposition to the plans proposed for taxing the colonies, thereby incurring the hostility of the King and of his colleagues. Upon the remodelling of the cabinet in September he resigned office, and thenceforth attached himself to the policy and fortunes of Mr. Pitt, who, upon assuming the reins of government in 1766, made him Secretary of State for the southern department, which included the colonies. He here renewed his endeavors to remove all causes of complaint between the colonies and the mother country, but was constantly thwarted by Townshend, the Duke of Grafton, and others of his colleagues, who during the illness of Pitt, now become Earl of Chatham, had acquired a predominating influence in the cabinet. Not choosing to resign until he could advise with Chatham, he was dismissed by the King in October, 1768; and thenceforth, during the Grafton and North administrations, he proved himself one of the ablest and most active opponents of the ministry in the upper House. Upon the resignation of Lord North in March, 1782, he took office under the Marquis of Rockingham; and upon the death of the latter in July of that year he was intrusted by the King with the formation of a new ministry. The new Premier had to encounter the opposition of the Fox party, who were disappointed that the Duke of Portland had not received office; and the coalition between these and the adherents of Lord North compelled him to resign in February, 1783. From this period he withdrew almost wholly from public life. Lord Shelburne was considered one of the most liberal and accomplished statesmen of his time, and probably carried out more fully than any of his contemporaries the principles inculcated by the elder Pitt.—*Rose's Biog. Dict.*

1. 18 Parl. Hist. 223.

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The House of Lords having got into sad confusion, and the Government being in danger of discomfiture from the imbecility of the Lord Chancellor, the Chief Justice rose from a back bench and made a very long and able speech, a few passages of which still possess interest :

Lord
Mansfield's
speech for
a vigorous
prosecu-
tion of the
war.

" My Lords,—We are reduced to the alternative of adopting coercive measures, or at once submitting to a dismemberment of the empire. Consider the question in ever so many lights, every middle way will speedily lead you to either of these extremities. The supremacy of the British legislature must be complete, entire, and unconditional ; or, on the other hand, the colonies must be free and independent. The claim of *non-taxation* is a renunciation of your authority. If the doctrine be just, it extends to the right of separating from you and establishing a new republic. It is to the last degree monstrous and absurd to allow that the colonists are entitled to legislate for themselves on one subject and not on all. If they have any such privilege, the defence of it would justify resistance ; and I have not yet heard any noble lord say that their resistance would not be rebellion.¹ . . . I admit the impolicy of the taxes imposed in 1767, which have been the cause of the troubles and confusion which we now deplore. They irritated the colonists, cramped our own commerce, and encouraged smuggling, for the benefit of our commercial rivals.² But the course was to petition for their repeal, and not to treat them as illegal. Concession now is an abdication of sovereignty. All classes will feel severely the effects of war, and no one can answer for its events. The British forces may be defeated ; the Americans may ultimately triumph. But are you prepared to surrender without striking a blow ? The question being whether the right of the mother country shall be resolutely asserted or basely relinquished, I trust there can be no doubt that your Lordships are prepared firmly to discharge your duty, convinced that the proper season for clemency is when your efforts have been crowned with victory."

1. However, in answer to Dr. Johnson's "*Taxation no Tyranny*," there came out soon after a pamphlet entitled "*Resistance no Rebellion*."

2. This was a skilful shot, for Lord Camden was then Chancellor, and Lord Chatham held the Privy Seal, and was nominally Prime Minister, although secluded from public business.

Lord Camden unconstitutionally and pusillanimously CHAP. XXXVII. disclaimed having had any concern in the measure of taxing America adopted by the administration to which he belonged, saying that "he was never consulted about it, and that he was at the time closely and laboriously employed in discharging the weighty functions of his office."

Duke of Grafton: "My Lords, it is mean, and much Specimen of the manners of the House of Lords in the reign of George III. beneath the dignity of one who acted in the exalted station of the noble and learned Lord, to try to screen himself from the disagreeable consequences of the measure now deplored, and to shift the blame from his own shoulders on those of others who, he knows, were no more the authors of it than himself. The measure was consented to in the Cabinet ; the noble and learned Lord sat on that woolsack while it passed through this House in all its stages. He was the very person who officially notified the royal assent to it, and is he now to tell the House that it passed without his approbation or participation ? With respect to the other noble and learned Lord, I must regret that the administration with which I was connected was the only one which, for a long course of years, had not the benefit of his assistance. Other administrations, no doubt, profited much by his experience and ability ; and, if he had continued to attend the Cabinet, I am sure his advice would always have been respectfully heard ; although, from doubts as to its being constitutional and expedient, it might not always have been followed."

Lord Mansfield: "I feel this to be a direct attack upon me for improperly mixing in politics, and I must exculpate myself from the charge. I was a privy councillor during a part of the last reign, and I have been during the whole of the present. But there is a nominal council, and there is an efficient council called the CABINET. For several years I acted as a member of the latter ; and, consequently, deliberated with the King's minister. However, a short time previous to the administration in which the noble Marquis opposite [Rockingham] presided, and some considerable time before the noble Lord succeeded him in that department, I prayed his Majesty to excuse my further attendance ; and, from that day to the present, I have declined to act as a member of the

CHAP. Cabinet. I have lived with every administration on equally
 XXXVII. good terms ; I have never refused my advice when applied to :
 the noble Marquis must recollect several occasions when I
 gave him the best assistance my poor abilities were capable of.
 I was equally ready to assist the noble Duke ; and, if he had
 asked my opinion upon the taxes which, by his instrumentality,
 were imposed upon America, I should certainly have pro-
 nounced them impolitic. I opposed the repeal of the Stamp
 Act from a sense of public duty ; but I took no other part in
 opposing the Government, and I even returned a hostile proxy
 that I might not appear to be encouraging others to obstruct its
 measures. I have never interfered unless for the good of my
 country, and no profit or emolument has ever accrued to me
 from being the member of any Cabinet."

Lord Shelburne : "The noble and learned Lord who has
 just sat down endeavors to strengthen his bare assertion that
 he has never improperly interfered by showing what little or
 no temptation he could have to interfere ; but the noble and
 learned Lord knows—every noble Lord in this House knows—
 a court has many allurements besides profit and emolument.
 He denies any obligations or personal favors whatever : but he
 will permit me to observe that smiles may do a great deal ;
 that, if he had nothing to ask for himself, he had friends,
 relations, and dependants, who have been amply provided for
 —I will not say beyond their deserts, but this I may say, much
 beyond their most sanguine expectations. Independent, how-
 ever, of these considerations, I think the pride of directing
 the councils of a great nation to certain favorite purposes,
 and according to certain preconceived principles, may tempt
 to great hazards, and to interferences which, upon an impeach-
 ment, it would be hard to justify. Measures of high impor-
 tance being disclaimed by the ostensible ministers who proposed
 them, we cannot tell by whom we are ruled, and we cannot be
 said to live under responsible government. Several bills of the
 last session for coercing our American brethren having been
 disavowed by the officers of the Crown who ought to have
 prepared them, it is natural for the public to look to a great
 law Lord, notoriously high in the confidence of the present
 Cabinet (if not a member of it), with whose doctrines the harsh
 enactments of these bills so exactly agree."

Lord Mansfield (rising in a great passion) : "I thought, my

Lords, it had been the leading characteristic of the members of this assembly, contrasted with those of another who too often descend to altercations and personal reflections, always to conduct themselves like gentlemen ; but I see that rule departed from this evening for the first time. I charge the noble Lord who last addressed the House with uttering the most gross falsehoods. I totally deny that I had any hand in preparing *all* the bills of the last session,¹ and I am certain that the law officers of the Crown never asserted that they had no hand in them. But whether they had or had not is of no consequence to me, for I am sure the charge applied to me is as unjust as it is maliciously and indecently urged." CHAP.
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According to the PARLIAMENTARY HISTORY, "Lord Shelburne returned the charge of falsehood to Lord Mansfield in direct terms."² This scene makes the conflicts approaching to personality which in our days sometimes take place, between law lords and other members of the House, appear almost courteous and orderly. I do not find that there was any apology, or that any of the parties were ordered into the custody of the Black Rod³ to prevent a breach of the peace. The House divided at two in the morning,—when the address was carried by a majority of 104 to 29,—and the following day passed over without any news of the ex-Chancellor or the Lord Chief Justice of the King's Bench having fought a duel in Hyde Park.

The combat was speedily renewed in the House of Lords. America was the subject of almost daily discussion ; and, till the vigorous Thurlow was substituted as Chancellor for the feeble Bathurst, the efficient defence of the measures of the Government rested mainly

1. *Sic* in the Parliamentary History (vol. xviii. p. 282), but he can hardly have used such language. This would be what he himself, in the Court of King's Bench, would have called "a negative pregnant," *i. e.* a negative pregnant with an affirmative,—admitting that he prepared the bills *de quibus agitur*.

2. Vol. xviii. p. 283.

3. 18 Parl. Hist. 221-298.

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on Lord Mansfield. He was not formally a member of the Cabinet, but Lord North was in frequent communication with him; he had audiences of the King, and he was substantially a minister.

Dec. 20,
1775.

He strongly urged (and so far he was right) that if there was to be a civil war it ought to be carried on by England with more vigor. When the bill to prohibit all intercourse with certain of the American States was debated, he thus answered the argument that the measure would produce great distress:

"Yet, my Lords, admitting all this to be true, what are we to do? Are we to rest inactive, with our arms folded, till they shall think proper to begin the attack, and gain strength to act against us with effect? We are in such a situation that we must either fight or be pursued. What a Swedish general in the reign of Gustavus Adolphus said to his men, just on the eve of a battle, is extremely applicable to us at present. Pointing to the enemy, who were marching down to engage him, said he, 'My lads, you see those fellows yonder; if you do not kill them, they will kill you.' My Lords, if we do not get the better of America, America will get the better of us. We do not fear that they will attack us at home; but consider what will be the fate of our sugar islands? what will be the fate of our trade?"

Supposed
consequences of
the independence
of America.

He goes on at great length to argue that if the insurgents obtained independence they would speedily wrest from us all our possessions in the West Indies, as well as on the continent of America, and that we should be utterly ruined by their great commercial prosperity: the doctrine still being entertained,—even by intelligent men, who never thought of reciprocity, or believed that goods exported or imported are paid for otherwise than by the precious metals,—that there is a limited and invariable aggregate of commerce in the world; and that in proportion as any nation has a large share of it, less is left for others.¹

The town was for a time relieved from such discussions by the trial of the Duchess of Kingston¹ for bigamy, which was regarded as an amusing farce. Lord Mansfield, seeing the nature of this exhibition, and aware how it must terminate, ineffectually attempted to mitigate the disgrace it must bring upon the administration of justice by moving that—instead of Westminster Hall being fitted up for the occasion as if a sovereign were to be called to account for subverting the liberties of his people, or the governor of a distant empire become dependent on the crown of England were impeached for oppression and misrule,—the amorous intrigues of this lady of fashion should be investigated in the small chamber in which the Peers then usually met. Several peers having urged that, from the dignity of the party accused, the more solemn mode of proceeding should be preferred, he said,—

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Trial of the
Duchess of
Kingston
for big-
amy.

“I do not conceive that the charge against the lady has anything sufficient to distinguish it from many others tried at your Lordships’ bar. In 1725 I was present myself when Lord Macclesfield² was tried for a grievous offence at this bar; an

1. Elizabeth Chudleigh, Duchess of Kingston, an English beauty, born in 1720. She was privately married to Harvey, who became Earl of Bristol, and from whom she was soon separated. In 1769 she was again married to the Duke of Kingston. She was tried on a charge of bigamy, and convicted. Died in 1788.—*Thomas’ Biog. Dict.*

2. In November, 1724, a committee of the privy council was appointed to inquire into the funds of the suitors in the hands of the masters in chancery. Their report showed not only that there were considerable defalcations in some of the masters’ offices, but that there was a case of grave suspicion against the Lord Chancellor. Macclesfield consequently resigned the seals on June 4, 1725, though he still continued in favor at court. (Harris, “Life of Lord Chancellor Hardwicke,” i. p. 73.) On the 23d of the same month a petition was presented to the House of Commons from the Earl of Oxford and Lord Morpeth as the guardians of Elizabeth, Dowager Duchess of Montrose, a lunatic, stating that large sums belonging to her estate in the possession of the Court of Chancery were unaccounted for, and praying for relief. (Parl. Hist. viii. 414.) On Feb. 9 copies of several reports and other papers relating to the masters in chancery were laid before the House of Commons by the King’s

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XXXVII. offence, considering the office he then held, that of Chancellor of Great Britain, accompanied by several aggravating circum-

command. (Parl. Hist. viii. 415.) On Feb. 12 Sir George Oxenden, after referring at length to the "enormous abuses" in the Court of Chancery, "chiefly occasioned by the magistrate who was at the head of that court, and whose duty consequently it was to prevent the same," moved Macclesfield's impeachment. The motion was opposed by Pulteney and Sir William Wyndham, and was carried by a majority of 107 votes. On the following day Macclesfield was impeached at the bar of the House of Lords. (Journals of the House of Lords, xxii. 417.) The trial commenced on May 6, 1725, and lasted thirteen days. It took place in the House of Lords, and was presided over by Lord Chief Justice King. The articles of impeachment, which were twenty-one in number, charged Macclesfield with selling masterships in chancery; with receiving bribes for agreeing to the sale and transfer of offices; with admitting to the office of master several persons "who were of small substance and ability, very unfit to be trusted with the great sums of money and other effects of the suitors"; with suffering the fraudulent practice of masters paying for their places out of the money of the suitors; with endeavoring to conceal the delinquencies of one Fleetwood Dormer, an absconding master; with encouraging the masters to traffic with the money of the suitors; with making use of it himself "for his own private service and advantage"; with persuading the masters "to make false representations of their circumstances" at the inquiry; and with assuming "an unjust and unlimited power of dispensing with, suspending, and controuling the statutes of this realm." The principal managers for the Commons were Sir George Oxenden, Sir Clement Wearg (the Solicitor General), Bubb Dodington, Sergeant Pengelly, Arthur Onslow, Sir John Rushont, and Lord Morpeth. Sir Philip Yorke (the Attorney General) was excused from taking any part in the proceedings owing to his many obligations to the accused. Macclesfield, who was defended by Sergeant Probyn, Dr. Sayer, and three other counsel, took an active part in the cross-examination of the witnesses. After his counsel had been heard he addressed the House on the whole case in a most masterly manner. He disclaimed all corruption, and relied upon law and usage, maintaining that the practice of taking money for the masterships had been "long practised without blame." After a minute analysis of the evidence he declared that he had not taken the advantage of his position for amassing wealth as he might have done, and concluded by saying, "I submit my whole life and conduct to your Lordships' judgment, and rely entirely upon your justice for my acquittal." On May 25 Macclesfield was found guilty by the unanimous voice of the ninety-three peers present. On the following day motions that he should be disqualified from holding any office in the state, and that he should never sit in parliament nor come within the verge of the court were negatived. (Ibid. xxii. 556, 558.) On the 27th he was sentenced to pay a fine of 30,000*l.* to the King (which was subsequently

stances, for which he might have incurred a fine that would have affected perhaps the whole of his fortune, and, consequently, have ruined his family. The proceedings were by impeachment,—the most solemn mode of preferring an accusation known under our laws. The prosecution was not carried on by counsel, as this will be, but by managers of the House of Commons, many in number. All accusations by bill of attainder¹ are carried on at this bar, and Lord Strafford lost his head on the event of a trial so conducted, the place of

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applied towards the relief of the suitors who had suffered from the insolvency of the masters in chancery), and to imprisonment in the Tower until the fine should be paid. On the 31st he was struck off the roll of the privy council by the King, who, however, signified his intention to Macclesfield of repaying to him the amount of the fine out of the privy purse. One instalment of 1000*l.* was repaid by the King, who died before any further payment was made. The deficiencies in the cash of the masters in chancery belonging to the suitors amounted to over 82,000*l.* In order to prevent the possibility of any improper use of the suitors' funds for the future, the office of Accountant General of the Court of Chancery was established by 12 Geo. I. cap. 32. A further act was passed whereby a fund was created for the relief of the distressed suitors by the imposition of additional stamp duties. (12 Geo. I. cap. 33.) Though to some extent it may be said that Macclesfield was made to suffer for a vicious system established by his predecessors in office, there can be no doubt of the justice of his conviction. It was clearly proved that he had not been content with the accustomed "gifts," but had raised the price of the masterships to such an extent that the appointees were obliged either to extort unnecessary fees by delaying the causes before them, or to use the money deposited by the suitors in order to recoup themselves. It was also proved that he employed an agent to bargain for him, that he was aware of the improper use of the suitors' money, and that he had endeavored to conceal the losses which had thus been incurred. Macclesfield remained in the Tower for six weeks while the money was being raised for the payment of his fine. He took no further part in public affairs, spending his time after his release chiefly at Shirburn Castle in Oxfordshire, which he had purchased in 1716, and occasionally visiting London, where at the time of his death he was building a house in St. James's Square, afterwards inhabited by his son. (Quarterly Review, lxxxii. 595.) Macclesfield acted as one of the pall-bearers at the funeral of Sir Isaac Newton in Westminster Abbey on March 28, 1727.—*Dict. Nat. Biog.*

1. Bills of attainder are statutes enacted by the supreme legislative power for the immediate occasion, inflicting capital penalties retrospectively, without conviction in the regular course of administration through courts of justice.—*Ex p. Law*, 35 *Ga.* 298; 3 *Am. and Eng. Encyc. of Law* (2d ed.) 248.

CHAP. XXXVII. trial not being considered one of the hardships he had to encounter.¹ If, then, trials affecting the life, fortune, and honors of a peer of the realm have proceeded in the chamber of parliament, will your Lordships think that greater solemnity is due to a trial where conviction can lead to no punishment?—for I must remind your Lordships that this is a clergiable offence, for which a peeress can only be admonished ‘to sin no more, lest a worse thing befall her.’ If she is brought to trial in Westminster Hall, the eyes of Great Britain and of all Europe will impatiently wait for the issue; and what will be thought when a verdict of GUILTY produces nothing but an admonition and a curtesy?”

However, the Peers would have the spectacle, and it terminated exactly as was here foretold.²

October.
Lord
Mansfield
created an
Earl.

A.D. 1792.

Lord Mansfield, for his judicial services, deserved the highest distinctions that could be bestowed on him; and by the part he took against the Americans he was specially endeared to George III., who entered into the contest and persevered in it with much more eagerness than any of his ministers. As a mark of royal favor, the Chief Justice had some time before this been created a Knight of the Thistle; and now he was raised to a higher dignity in the peerage, with a limitation to preserve the title although he had no children, and to make it take precedence of the hereditary honors of his house. He was made Earl of Mansfield, of Mansfield in the county of Nottingham, with remainder to Louisa Viscountess Stormont and her heirs, by Viscount Stormont, the nephew of the new Earl. The lady was thus introduced because it had been erroneously decided that a British peerage could not be conferred upon a Scotch peer although he might inherit it from his mother. When this absurdity was, some years

1. Lord Strafford's trial on the impeachment was in Westminster Hall, although it was on the bill of attainder that he suffered.—3 *St. Tr.* 1413.

2. 18 *Parl. Hist.* 1112; 20 *St. Tr.* 355-651.

afterwards, corrected by a contrary decision, a new patent was granted to Lord Mansfield, in which he was designated Earl of Mansfield, of Caen Wood, in the county of Middlesex, with remainder to Viscount Stormont and his heirs. Thus two Earldoms of Mansfield were constituted—the latter of which, on the death of the first grantee, descended upon Viscount Stormont,—while the former was taken by the Viscountess, and enjoyed by her in her own right many years after her husband's death.

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On his first promotion in the peerage, the Earl of Mansfield received this congratulatory epistle from his old school-fellow, Bishop Newton :¹

“ Kew Green, Oct. 20th, 1776.

“ My Lord,—You have long merited the highest honors which this country can bestow ; but it was not fitting that they should die with you : something should remain as a monument to posterity. I beg leave, therefore, to congratulate your Lordship, or rather my Lord Stormont, upon your additional titles. Nothing can be properly an addition to yourself. You may rank higher in the world, but you cannot rise higher in the opinion and esteem of all who know you, and particularly of,

“ My dear Lord,

“ Your^d Lordship's ever affectionate and obedient servant,

“ J. BRIST.”

The following answer was returned, disclosing the private feelings of the writer on this occasion, and presenting him in rather an amiable point of view :

“ Kenwood, Oct. 22, 1776.

“ My dear Lord,—I am exceedingly flattered by your letter, which I have just received ; because I know the friendly sincerity of the heart from whence it flows. You do justice to

1. Thomas Newton, an English divine, born at Lichfield in 1704, rose through various preferments to be Bishop of Bristol (1761). He published an excellent edition of Milton's “ Paradise Lost,” with notes (1749), and “ Dissertations on the Prophecies,” etc. (3 vols., 1754-58), which were translated into German and Danish. Died in 1782.—*Thomas's Biog. Dict.*

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my view in this creation. Lady Stormont is five months gone with child. If it please God to bless Lord Stormont with issue male, I wish, from a pardonable vanity because common, that they may represent my name as their first title. The manner of conferring this mark did great honor, and consequently gave great pleasure, to

"Your most affectionate, &c.,

"MANSFIELD."

But we must now return to graver matters. Hostilities with America ere long began; and, notwithstanding frequent appeals to the principles of freedom from Lord Chatham, Lord Camden, and the opposition leaders in the House of Commons, there can be no doubt that the war in its origin was popular, and that the vast majority of Englishmen approved of Lord Mansfield's exhortations to crush rebellion and to preserve British ascendancy. His sentiments harmonized even with those of the city of London, where Wilkes had fallen into contempt. Therefore, when called upon to try Horne Tooke for a libel in taking part with the Americans, he felt none of the misgivings and apprehensions which had overwhelmed him on the trials of the printers of JUNIUS. The demagogue who now struggled to bring the Government into odium,—notwithstanding his great acuteness and power of sarcasm,—was not very successful in gaining public sympathy,—so that he was never able to rival Wilkes as the representative of a popular constituency,—and never had even a taste of parliament till, very late in life, he became the nominee of the capricious owner of a rotten borough, who hesitated some time between him and a negro.

Trial of
John
Horne
Tooke for
a libel.
July 4,
1777.

The charge against him was for writing and publishing an advertisement, proposing a subscription "to be applied to the relief of the widows, orphans, and aged parents of our beloved American fellow-subjects,

who, faithful to the character of Englishmen, preferring death to slavery, were, for that reason only, inhumanly murdered by the King's troops at Lexington and Concord, in the province of Massachusetts." He conducted his defence in person against Mr. Attorney General Thurlow. His great object seems to have been to provoke Lord Mansfield to a sally of impatience, of which he might have taken advantage; and he even cross-examined some printers of newspapers respecting their having been "solicited not to insert any observations upon a late legal Earldom": but he was completely foiled, for the Chief Justice remained throughout calm and placid, and, always felicitously seizing the right moment for the exercise of authority, gained an unsullied triumph. In summing up to the jury, he not only left to them his usual questions as to publication and the *innuendoes*, but, confident in their *anti-Yankie* feelings, he asked their opinion on the criminality of the alleged libel, saying,—

"Read! You will form the conclusion yourselves: 'Our beloved American fellow-subjects,'—in rebellion against the state! They are our fellow-subjects, but not so absolutely beloved without exception! 'Beloved' to many purposes: beloved to be reclaimed; beloved to be forgiven; beloved to have good done to them; but not beloved to be abetted in their rebellion! The information charges the libel to relate to the King's government and the employment of his troops. Read it, and see whether it does relate to them. If it does, what is the employment they are ordered upon? The paper says, '*to murder innocent subjects*, because they act like Englishmen and prefer liberty to slavery'! Why, then, what are they who gave the orders? What are they who execute them? Draw the conclusion. Read this paper, and judge for yourselves. You will consider whether it conveys a harmless innocent proposition for the good and welfare of this kingdom, the support of the legislative government and the King's authority according to law. Is the contest to reduce innocent subjects to slavery? and were those who fell fighting against

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CHAP. the King's troops at Lexington really *murdered* (as you have
XXXVII. been told) like the unhappy victims who were massacred in
their beds at Glenco?"¹

The jury, after a short deliberation, found a verdict of *Guilty*; and the defendant was sentenced to a year's imprisonment, and to pay a fine of 200*l*.²

Disasters
in America.

But the hope of speedily crushing the Americans, which had animated Lord Mansfield, and had induced the great bulk of the nation warmly to support the policy of the Government, was cruelly disappointed. Every fresh arrival showed the aspect of affairs beyond the Atlantic to be more and more alarming, and in the course of a few months came the stunning intelligence that General Burgoyne³ and his army had capitulated

1. The massacre of Glencoe (Feb. 13, 1692) has left a dark stain on the reign of William III. The civil war continued to smoulder in the Highlands for several years after the death of Dundee. The management of affairs in Scotland was at this time in the hands of the Dalrymples, and Viscount Stair, their head, was President of the Court of Session, while the younger, the Master of Stair, was Secretary for Scotland. A proclamation was issued promising pardon to all who before Dec. 31, 1691, should swear to live peaceably under the existing government. MacIlan of Glencoe, who dwelt at the mouth of a ravine near the south shore of Loch Leven, deemed it a point of honor to take the oath as late as possible. On the appointed day he went to Fort William, but, finding no magistrate there, he had to go to Inverary, which he did not reach until Jan. 6th. This delay gave his enemies, the Campbells, a pretext for destroying him. Argyle and Breadalbane plotted with the Master of Stair. William was not informed that MacIlan had taken the oath at all. An order was laid before him for the commander-in-chief, in which were the words, "It will be proper for the vindication of public justice to extirpate that set of thieves." The excuse usually advanced for William, that he signed the order without reading it, is probably true, but it is at best a lame one. The order was remorselessly executed. A band of soldiers was sent to the glen, where they were hospitably received by the Macdonalds. At last, on a given day, the passes having been stopped by previous arrangement, the soldiers fell upon their entertainers. A failure in the plan led to the escape of many. But the houses were destroyed, the cattle stolen, thirty-eight men killed on the spot, and others perished of want or cold on the mountains.—*Dict. of Eng. Hist.*

2. 20 St. Tr. 651–802.

3. Lieut. Gen. John Burgoyne, (b. 1730, d. 1792), a natural son of

at Saratoga. The poignancy of Lord Mansfield's grief at seeing all his predictions falsified, and being reproached as one of the principal authors of the measures which had proved so disastrous, was greatly aggravated by the attempt to form a new administration, at the head of which was to be placed the man whom he most dreaded and most hated. His own office was secure, with all its great emoluments: but he was to lose power, which, notwithstanding his assertions and perhaps his belief to the contrary, he fondly cherished; and he must either go into opposition, which was uncongenial to his nature, or become the humble supporter of an imperious rival. He was relieved from these apprehensions by the failure of the negotiation with Lord Chatham which had been entered

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Feb., 1778.

Lord Bingley, in 1762 acted as brigadier general under Lord Tyrawley in Portugal, where he greatly distinguished himself by a most daring and successful raid upon a strong body of troops who were guarding the magazines at Valentia. In 1775 he was appointed to a command in America. The next year he was summoned home to advise the King on colonial questions, but returned to his command in 1777, when he at once issued an invitation to the natives to join the English flag. He then organized an expedition in order to join Clinton, who was advancing from the south. Before they could meet, however, Burgoyne had encountered such difficulties that he was compelled to surrender on the Oct. 17th at Saratoga. He was allowed to come home on parole, and no sooner had he arrived than the opposition made overtures to him to lay the blame of the disaster on the government. He thus became odious to the ministry, whom he charged with mismanagement in not supplying him with proper resources; and the King meanwhile refused to see him, or to allow him a court-martial, which he demanded. This the ministry also strenuously opposed, knowing that the corruption of the War Department would come out if any inquiry were held. In 1779 Burgoyne refused to go back to America, on the ground that his honor did not compel him to do so; and the ministry seized the opportunity to dismiss him from the army. On the Rockingham ministry coming in, in 1782, he was reinstated, and appointed commander-in-chief in Ireland. Burgoyne's previous services lead us to infer that the disaster of Saratoga was not entirely due to himself; and this idea is confirmed by the steady refusal of the government to allow any inquiry. In the absence of that inquiry, it is difficult to form a just estimate of Burgoyne's merits.—*Dict. of Eng. Hist.*

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into when France showed a determination to take part with the Americans; and he continued vigorously to support Lord North against all the proposals which were pressed upon him for renouncing our supremacy over the colonies, or for making concessions to them with a view to conciliation. Lord Chatham, who recommended the latter course, still scorning the notion of American independence, seemed to become more formidable in intellect as his bodily faculties decayed; and, during his declamation against the employment of savages with scalping-knives in carrying on the war, Lord Mansfield silently quailed under him, afraid of being blasted by the lightning of his wrath, while he spoke these scornful words: "I do not call for vengeance on the heads of those who have been guilty; I only recommend retreat: let them walk off, and let them make haste, or speedy and condign punishment will overtake them."

It was indispensably necessary to meet such attacks with firmness, or to perish by them; and when Lord Chatham announced his intention, notwithstanding severe illness, to be present on the Duke of Richmond's motion in the committee on the state of the nation, it was resolved that the friends of Government should answer him,—and Lord Mansfield, remembering conflicts with his great rival in which he himself had the advantage, felt his courage revive.

Death of
Lord
Chatham.
April 7,
1778.

Fate had ordained that they should never have another conflict. The appointed day arrived. Lord Chatham appeared, and spoke some time with all his ancient fervor; but he perished in the effort. When, in the garb of sickness, he was led into the House between his son and son-in-law, Lord Mansfield joined in the voluntary tribute of respect paid to him by standing up while he passed to his proper place. Having risen slowly and with difficulty to address the House,

supported under each arm by his relatives, the dying patriot took one hand from his crutch, and, raising it, and casting his eyes towards heaven, he thus began: "I thank God that I have been enabled to come here this day to perform my duty, and to speak on a subject which has so deeply impressed my mind. I am old and infirm—have one foot, more than one foot, in the grave;—I am risen from my bed to stand up in the cause of my country—perhaps never again to speak in this House." Most who heard him were softened with pity, as well as struck with awe; but Lord Mansfield appeared to be thinking only of the topics which were likely to be urged by the assailant, and the best arguments to be used in answering him. The exertion of the orator proving too mighty for his enfeebled frame, he sank in a swoon, and the House was thrown into alarm and agitation,—but Lord Mansfield so conducted himself as entirely to escape the charge of affected sorrow.

We have the most authentic account of what then passed in a letter written immediately after to the Duke of Grafton, who was absent, by Lord Camden, who had been sitting by the side of Lord Chatham, and who thus describes the catastrophe:

Lord
Mansfield's
behavior
on this oc-
casion.

"He fell back upon his seat, and was to all appearance in the agonies of death. This threw the whole House into confusion; every person was upon his legs in a moment hurrying from one place to another, some sending for assistance, others producing salts, and others reviving spirits. Many crowding about the Earl to observe his countenance, all affected, most part really concerned; and even those who might have felt a secret pleasure at the accident, yet put on the appearance of distress, except only the Earl of M., who sat still, almost as much unmoved as the senseless body itself."¹

An attempt has been made by a warm admirer and most eloquent eulogist of Lord Mansfield to rescue him

1. See 19 Parl. Hist. 1012-1058.

CHAP. XXXVII. from the charge of this supposed *nonchalance*, and to fix it upon another: "The Earl of M.," says Lord Brougham, "so discredibly mentioned in this letter, must have been Lord Marchmont. In the Lords' Journals for that day, April 7, 1778, he and Lord Mansfield are the only Earls of M. present; and Lord Mansfield was wholly incapable of suffering such feelings to be seen on such an occasion."¹

The Earl of Marchmont was present on this occasion, but I know not why insensibility should be imputed to him more than to his distinguished countryman; and it is quite certain that *his* demeanor would have excited no attention,—that all mankind must have been anxious to observe the impression made by the death-blow of Chatham on an old rival,—and that Lord Camden, writing to the Duke of Grafton, by "the Earl of M.:" could mean none other than the Earl of Mansfield, whom they both knew so familiarly. Besides, I am not sure that the imputation, though maliciously meant, ought seriously to lower the object of it in our esteem, for it is not pretended that he betrayed any satisfaction; and, instead of idly proffering assistance, or hypocritically beating his bosom, he might have been thinking with some tenderness of their first meeting as students at Oxford, or calmly considering how soon his own earthly career must be concluded.

It cannot be denied, however, that he acted an ungenerous part in the proceedings which were proposed to do honor to the memory of the deceased, and to mark the public gratitude for his services in advancing the glory and prosperity of the country. Upon an address of the House of Commons, the King having given directions that the remains of the great patriot should be deposited in Westminster Abbey, Lord Shel-

burne gave notice of a motion in the House of Lords that their Lordships should all attend the funeral. Although there was a strong canvass, Lord Mansfield could not make up his mind to vote either for it or against it. He pusillanimously absented himself; and, upon a division, the motion was negatived by a majority of one.¹

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If he thought that the Peers, in their aggregate capacity, should not pay such homage to an individual from whose opinions they had generally differed, he might, without suspicion of political inconsistency, have attended the solemnity as a private person, to show his respect for the splendid talents and acknowledged virtues of him whom he had known intimately when a boy, and with whom he had been engaged in a competition for honorable distinction above half a century. But while the Court could not resist the general impulse in favor of a public funeral, all true courtiers endeavored to diminish the effect of it; and Lord Mansfield's name is not to be found in the list of those who saw consigned to the tomb the dust of the greatest orator and statesman England had produced for ages.²

An opportunity soon occurred to him for relieving himself from the uneasy feelings which must have annoyed him when he reflected on his paltry conduct. The bill for annexing an annuity of 4000*l.* a year to Lord Chatham's title, which had passed the House of Commons almost unanimously, was strongly opposed in the House of Lords; and the Lord Chancellor, and other members of the party called the "King's Friends,"³

1. Lords' Journals, 19 Parl. Hist. 1233.

2. "Lord Chatham's funeral was meanly attended, and Government ingeniously contrived to secure the double odium of suffering the thing to be done and of doing it with an ill grace." (Gibbon's Misc. Works, vol. i. p. 538.) The Annual Register for 1778, however, says that "the funeral was attended by a great number of lords, mostly in the minority."

3. The character of this faction has been drawn by Burke with

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not only objected to it on the score of economy, but made violent attacks on the career and character of the

even more than his usual force and vivacity. Those who know how strongly, through his whole life, his judgment was biassed by his passions may not unnaturally suspect that he has left us rather a caricature than a likeness; and yet there is scarcely, in the whole portrait, a single touch of which the fidelity is not proved by facts of unquestionable authenticity. The public generally regarded the King's friends as a body of which Bute was the directing soul. It was to no purpose that the Earl professed to have done with politics, that he absented himself year after year from the levee and the drawing-room, that he went to the north, that he went to Rome. The notion that, in some inexplicable manner, he dictated all the measures of the court was fixed in the minds, not only of the multitude, but of some who had good opportunities of obtaining information, and who ought to have been superior to vulgar prejudices. Our own belief is that these suspicions were unfounded, and that he ceased to have any communication with the King on political matters some time before the dismissal of George Grenville. The supposition of Bute's influence is, indeed, by no means necessary to explain the phenomena. The King, in 1765, was no longer the ignorant and inexperienced boy who had, in 1760, been managed by his mother and his Groom of the Stole. He had during several years observed the struggles of parties, and conferred daily on high questions of state with able and experienced politicians. His way of life had developed his understanding and character. He was now no longer a puppet, but had very decided opinions both of men and things. Nothing could be more natural than that he should have high notions of his own prerogatives, should be impatient of opposition, and should wish all public men to be detached from each other and dependent on himself alone; nor could anything be more natural than that, in the state in which the political world then was, he should find instruments fit for his purposes. Thus sprang into existence and into note a reptile species of politicians never before and never since known in our country. These men disclaimed all political ties except those which bound them to the throne. They were willing to coalesce with any party, to abandon any party, to undermine any party, to assault any party, at a moment's notice. To them all administrations and all oppositions were the same. They regarded Bute, Grenville, Rockingham, Pitt, without one sentiment either of predilection or of aversion. They were the King's friends. It is to be observed that this friendship implied no personal intimacy. These people had never lived with their master as Dodington at one time lived with his father, or as Sheridan afterwards lived with his son. They never hunted with him in the morning or played cards with him in the evening, never shared his mutton or walked with him among his turnips. Only one or two of them ever saw his face, except on public days. The whole band, however, always had early and accurate information as to his personal inclinations. These

deceased Earl,—even depreciating his talents.¹ Lord Mansfield was present, but remained silent.² I am afraid it is impossible to doubt that on this and other occasions he displayed a want of heart, as well as of moral courage. But we must not hate or despise him for these infirmities: if, to the great qualities which he actually possessed, he had added the boldness of Chatham and the friendly enthusiasm of Camden, he would have been too perfect for human nature.

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people were never high in the administration. They were generally to be found in places of much emolument, little labor, and no responsibility; and these places they continued to occupy securely while the cabinet was six or seven times reconstructed. Their peculiar business was not to support the ministry against the opposition, but to support the King against the ministry. Whenever his Majesty was induced to give a reluctant assent to the introduction of some bill which his constitutional advisers regarded as necessary, his friends in the House of Commons were sure to speak against it, to vote against it, to throw in its way every obstruction compatible with the forms of parliament. If his Majesty found it necessary to admit into his closet a Secretary of State or a First Lord of the Treasury whom he disliked his friends were sure to miss no opportunity of thwarting and humbling the obnoxious minister. In return for these services the King covered them with his protection. It was to no purpose that his responsible servants complained to him that they were daily betrayed and impeded by men who were eating the bread of the government. He sometimes justified the offenders, sometimes excused them, sometimes owned that they were to blame, but said that he must take time to consider whether he could part with them. He never would turn them out; and, while everything else in the state was constantly changing, these sycophants seemed to have a life estate in their offices.—*Macaulay's Essay on the Earl of Chatham*.

1. Thurlow, in his coarse bantering manner, concluded with a parody upon the stanza in Chevy Chase respecting the death of Percy:

"Now God be with him," said our King,
"Sith 'twill no better be,
I trust I have within my realm
Five hundred as good as he."

2. On a division the numbers were, for the bill 42, against it 11. I have not been able to find out with certainty how Lord Mansfield voted. There was a protest, setting forth that "this may in after times be made use of as a precedent for factious purposes, and to the enriching of private families at the public expense"; but this was not signed by Lord Mansfield, and only by one prelate and three temporal peers.—19 *Parl. Hist.* 1233-1255.

CHAPTER XXXVIII.

CONTINUATION OF THE LIFE OF LORD MANSFIELD
TILL THE CONCLUSION OF THE TRIAL OF LORD
GEORGE GORDON.

CHAP. XXXVIII. Decline of Lord Mansfield's political importance after the death of Lord Chatham. LORD MANSFIELD and his friends expected that after the death of Chatham he would have an unbounded ascendancy in the House of Lords; but it is an undoubted fact that from this time his political importance greatly declined. He was not so much wanted as the champion of the Government, and the stimulus which had excited him to his finest parliamentary displays was gone. Thurlow, firmly seated on the woolsack, proved himself a match in debate for any member of Opposition; and he gallantly defended all ministerial measures till the nation, universally become sick of the war which they had once so much approved, forced Lord North to resign, that a negotiation might be opened with our revolted colonies as an independent state.

I find only one speech of Lord Mansfield upon the American question after Lord Chatham's death; and, strange to say, in this he recommends a coalition between the parties into which the state was then divided: but we must recollect that he no longer dreaded seeing in council him whom he and the King so mortally hated, and that there was no chance of the Government being able to carry on the war without some great accession to its strength. At the meeting of par-

liament in November, 1779, the Marquis of Rockingham, in opposing the address, moved an amendment which, after drawing a contrast between the happy state of affairs at the accession of his Majesty and the lamentable one to which the nation was reduced, represented to his Majesty that "if anything could prevent the consummation of public ruin, it could only be new councils and new counsellors." Lord Mansfield took a review of the different administrations which had succeeded each other during the present reign; showing that each of them was as much answerable for the disasters now deplored as the present administration, in whose time they had actually occurred :

"The tax on tea," said he, "sowed the seeds of the present rebellion; and that was imposed by the noble Duke in the blue ribbon, who now complains so bitterly of the measures of the Government. I will give no opinion at present whether it was a wise tax or not; but it was sanctioned by the noble and learned Lord [Lord Camden] who has denounced with such bitterness all who have advised the Crown since he resigned: and a noble Earl, who may now be considered the most active leader of Opposition, then had a seat in his Majesty's councils, and never openly objected to it. To suppose that he privately condemned, and yet appeared in parliament to support it, is an imputation that I would not throw upon him or upon any member of this assembly. The present Ministers neither passed the Stamp Act nor repealed it, nor imposed the tea duty nor induced the Americans to resist it. Why should they only be punished when the crime is common? and why should they be punished by the true authors of the misfortunes laid to their charge? But, my Lords, let us rather consider how the nation can be rescued from the perils which surround it. I say that nothing but a full and comprehensive union of all parties can effect its salvation. I am old enough to remember the country in very embarrassed situations — none, I acknowledge, like the present. I have seen violent party struggles — none so violent as the present. Nevertheless, I by no means despair." Having alluded to the arrangement made on the retirement of Sir Robert Walpole, and the

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1779.

He recommends
a coalition
of parties.

CHAP. XXXVIII. formation of Lord Chatham's first administration, he continued : " I had a hand in that negotiation, and what was the consequence ? Two persons only, after some fluctuation, were taken in ; yet by so immaterial a change the nation was satisfied, a coalition ensued, and the effect of that seasonable union was the immense accession of territory made in the course of the late glorious war. How far the temper of the nation or the state of parties may admit of a coalition at present, I will not pretend to determine ; but, my Lords, it is an event most earnestly to be desired, for the country requires the assistance of every heart and hand ; and with such coöperation, although I am far from desponding, I shall still anxiously await the event. My resolution is firm, but my confidence staggers."

Still the Government was strong in point of numbers, and the amendment was negatived by a majority of 82 to 41.¹

Lord
George
Gordon's
riots.

I now approach scenes which are most discreditable to the English nation, but in which Lord Mansfield appears to the highest advantage. To explain why he was the special object of the fury of the fanatical mob headed by Lord George Gordon² and for several days

1. 20 Parl. Hist. 1020-1092.

2. The Gordon Riots (June, 1780) were the most formidable popular rising of the eighteenth century. In 1778 a bill, brought in by Sir George Savile and Dunning, for the relaxation of some of the harsher penal laws against Catholics passed almost unanimously through both Houses. Protestant associations were formed in Scotland ; a leader was found in Lord George Gordon, a son of the Duke of Gordon, a silly young man of twenty-eight years of age ; and the agitation spread to England. On June 2d, 1779, a body of 50,000 persons met in St. George's Fields to petition for the repeal of the Catholic Relief Act. The mob forced their way into the lobby of the House, and, continually encouraged by Lord George Gordon, prevented the conduct of business. The House adjourned till Tuesday, the 6th. The mob dispersed ; but only to begin their work of destruction by demolishing the chapels of the Sardinian and Bavarian ministers. In the evening of the next day the mob renewed their ravages in Moorfields. On Sunday, the 4th, they proceeded to worse extremities. The next day the mob attacked the house of Sir George Savile, which was carried and pillaged. The alarm spread. Burke had to leave his own house and take refuge with General

in possession of the capital, I must go back to some of his decisions on questions connected with religion. He was actuated by the enlightened principles of toleration; and, although a sincere friend to the Church of England, he steadily protected, by the shield of the law, both Dissenters and Roman Catholics from the assaults of bigots who wished to oppress them.

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Lord
Mansfield's
love of
religious
toleration.

Lord Mansfield was the first judge who extended the prerogative writ of *mandamus* to enforce the admission of a dissenting minister to an endowed chapel: saying,—

“The right itself being recent, there can be no direct ancient precedent; but every case of a lecturer, preacher, schoolmaster, curate, or chaplain, is in point. Here is a *function* with emoluments and no specific legal remedy. The right

Remedy to
dissenting
ministers.

Burgoyne; and Lord George Gordon himself saw that the riots were proceeding too violently, and disavowed his old friends. On the 6th the Houses met after their adjournment. A motion was passed that the petitions should be considered “as soon as the tumults subside which are now subsisting.” On the very same evening one detachment of the rioters broke open Newgate and released the prisoners; others were meanwhile releasing, in the same violent way, the malefactors at Clerkenwell. Towards midnight the rioters burnt Lord Mansfield’s house in Bloomsbury Square, with its priceless library, the occupants barely escaping. The magistrates did not venture to read the Riot Act; and the Guards would not act until this formality had been gone through. On the 7th the King called a Council, and showed, as usual, that where courage was required he would not be wanting. The cabinet wavered on the right of the troops to interfere until the Riot Act had been read; but the Attorney General, Wedderburn, disposed of this difficulty, and the King insisted on prompt action. A proclamation was issued, warning all householders to close their houses and keep within doors; and orders were given to the military to act without waiting for directions from the civil magistrates. Soldiers everywhere drove the rioters before them; but in some cases it was necessary to resort to the use of musketry. The returns sent in show that 200 persons were shot dead, while 250 more were lying wounded in the hospitals, and still more were no doubt carried away and concealed by their friends. On Thursday morning the plunder and conflagrations were completely at an end. One hundred and thirty-five of the rioters were arrested; twenty-one were executed. Lord George Gordon subsequently became a convert to Judaism, and died in Newgate in 1793, having been convicted for libel in 1787.—*Dict. of Eng. Hist.*

CHAP. XXXVIII. depends upon election, which interests all the voters. The subject is of a nature to inflame men's passions. Should the Court deny this remedy, the congregation may be tempted to resort to force. A dispute as to who shall preach Christian charity, may well raise implacable feuds and animosities, in breach of the public peace, to the reproach of government and the scandal of religion. Were we to deny the writ, we should put Presbyterian Dissenters and their religious worship out of the protection of the law."¹

The question having arisen whether, in an action to recover penalties for bribery, a Quaker could be admitted as a witness on his affirmation without taking an oath, Lord Mansfield said,—

Evidence of a Quaker admitted in an action for bribery. "This question is of great importance to all the Quakers in the kingdom, and to the general administration of justice. I wish the affirmation of a Quaker had been put on the same footing as an oath in all cases whatsoever; and I see no reason against it, for the punishment of the breach of it is the same. Upon general principles I think the affirmation of a Quaker ought to be admitted in all cases, as well as the oath of a Jew or a Gentoo, or of any other person who thinks himself really bound by the mode and form in which he attests. But even the limited indulgence which they enjoy was obtained with much difficulty and after a long struggle. The legislature formerly looked upon Nonconformists as criminals; and Quakers, in particular, as obstinate offenders. This only served to increase their number. If they had been let alone, perhaps they would not have come down to these times. The more generous and liberal notions of the present age do not look upon real scruples in the light of an offence. However, Quakers are still excluded from giving evidence in 'criminal causes,'² and we are to say what was the meaning of the legislature by this exclusion. Although it may not be possible to give any good reason for the exception, it was made and it must be followed. But, being a hard positive law, it is not to be extended by construction. Now, although bribery is a crime, this action to recover penalties for bribery is a civil

1. 3 Burr. 1269; Holl. 263; *Rex v. Barker*.

2. 7 & 8 W. III. c. 34.

cause, as much as an action for money had and received. CHAP. XXXVIII.
 The exception must be confined to cases technically criminal.
 A different construction would not only be injurious to Quakers, but prejudicial to the rest of the King's subjects who may want their testimony."¹

A still nobler opportunity was afforded to Lord Mansfield of showing his liberality in matters of religion, when the corporation of the city of London, wishing at once to swell their revenues and to punish Dissenters, passed a bye-law inflicting a heavy pecuniary mulct upon freemen who, being elected, should not serve the office of sheriff; and then elected a Dissenter, who they knew would not serve, as he could not take the sacrament according to the rites of the Church of England. This gentleman, being sued for the penalty, pleaded, by way of defence, that "he was a Dissenter, and therefore was incapable of serving." This plea was overruled in the court in which the action was commenced, but the case ultimately came by appeal before the House of Lords. Fortunately we have an authentic account of Lord Mansfield's judgment, recommending a reversal. It was taken down by Dr. Philip Faraceaux, a famous Presbyterian divine, who was present when it was delivered, and his report of it was afterwards revised by Lord Mansfield. Although of great length, the whole of it may be perused with delight, but I can only afford to introduce a few extracts from it:

"There is no usage or custom independent of positive law which makes *Nonconformity* a crime. The eternal principles of natural religion are part of the common law; the essential principles of revealed religion are part of the common law;—so

1. *Atcheson v. Everett*, Cowp. 382. The exception, so modified, continued in force above half a century longer; but if a man is now falsely accused of murder, he may escape the gallows by calling a Quaker to prove his innocence. See 9 Geo. IV. c. 32; 3 & 4 W. IV. c. 49.

A
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CHAP. that any person reviling, subverting, or ridiculing them, may
XXXVIII. be prosecuted at common law.¹ But it cannot be shown from the principles of natural or revealed religion that, independent of positive law, temporal punishments ought to be inflicted for mere opinions with respect to particular modes of worship. Persecution for a sincere, though erroneous, conscience is not to be deduced from reason or the fitness of things. . . . Conscience is not controllable by human laws, nor amenable to human tribunals. Persecution, or attempts to force conscience, will never produce conviction, and are only calculated to make hypocrites or martyrs.

"My Lords, there never was a single instance, from the Saxon times down to our own, in which a man was punished for erroneous opinions concerning rites or modes of worship, but upon some positive law. The common law of England, which is only common reason or usage, knows of no persecution for mere opinions. For atheism, blasphemy, and reviling the Christian religion, there have been instances of persons prosecuted and punished upon the common law; but bare non-conformity is no sin by the common law; and all positive laws, inflicting any pains or penalties for nonconformity to the established rites or modes, are repealed by the Act of Toleration, and Dissenters are thereby exempted from all ecclesiastical censures. What bloodshed and confusion have been occasioned from the reign of Henry IV., when the first penal statutes were enacted, down to the revolution in this kingdom, by laws made to force conscience! There is nothing certainly more unreasonable, more inconsistent with the rights of human nature, more contrary to the spirit and precepts of the Christian religion, more iniquitous and unjust, more impolitic, than persecution. It is against natural religion, revealed religion, and sound policy. Sad experience and a large mind taught that great man, the President De Thou,² this doctrine. Let

1. This, I think, is the true sense of the often-repeated maxim, that "Christianity is part and parcel of the common law of England."

2. Jacques Auguste de Thou, an eminent French historian and statesman, born in Paris in October, 1553, was a son of Christophe de Thou, first President of the Parliament. He studied in Paris, and subsequently under Cujas (Cujacius) at Valence, in Dauphiné, where he formed a lasting friendship with Joseph Scaliger. Returning to Paris in 1572, he was present at the Massacre of St. Bartholomew, and en-

any man read the many admirable things which, though a ^{CHAP.} papist, he hath dared to advance on this subject, in the dedica- ^{XXXVIII.} tion of his history to Henry IV. of France¹ (which I never

tered the church as canon of Notre-Dame. The following year he accompanied Paul de Foix on an important mission to Italy, and after the accession of Henry III. he was appointed master of requests (1584) and councillor of state (1588). He was chiefly instrumental in promoting an alliance between Henry III. and Henry of Navarre, and, on the latter being crowned, under the title of Henry IV., became one of his most faithful adherents. In 1593 he was appointed by Henry grand master of the Royal Library, and soon after President *à mortier* in the Parliament of Paris. He published in 1604 the first eighteen books of his "History of his Own Time," of which a complete edition first appeared in 1620, in one hundred and thirty-eight books. It is distinguished for the purity of its style, as well as its accuracy and impartiality, and has obtained the commendations of the most eminent critics. De Thou died in 1617.—*Thomas' Biog. Dict.*

1. Henry IV. [often called in French *Henri le Grand*], King of France and of Navarre, and founder of the royal house of Bourbon, was born at Pau December 14, 1553. His father was Antoine de Bourbon, Duc de Vendôme, a lineal descendant of Louis IX., and his mother was Jeanne d'Albret, only child and heiress of Henri d'Albret, King of Navarre. She was a woman of superior merit, ardently devoted to the Protestant faith, in which she educated her son. In 1569, the civil war being renewed, Henry, then styled Prince of Béarn, joined the Protestant army, led by his uncle, the Prince of Condé (who recognized him as the chief of the party), and was present at the battles of Jarnac and Moncontour. The Protestants having gained a victory at Arnay-le-Duc, a treacherous peace was offered by the court and accepted in 1570. To inspire the Huguenots with greater confidence, a marriage was negotiated between Henry and the King's sister Margaret. While the Queen of Navarre was making preparation at Paris for the marriage of her son, she died suddenly, in 1572, and he became King of Navarre. A few days after the marriage was celebrated occurred the Massacre of Saint Bartholomew. Henry's life was spared on condition that he adopt the Roman Catholic religion; but he was confined and strictly watched for several years. In 1576 he escaped to Rochelle, and assumed the command of his friends, then menaced by the Catholic League. He displayed great skill and bravery in several campaigns, the operations of which were, however, for the most part on a small scale. In 1587 the Huguenots gained a decisive victory at Coutras. The King of France died in 1589, and named for his successor the subject of this article, who, since the death of the King's brother, was presumptive heir of the crown. His claim was disputed by a large army under the Duc de Mayenne, and by the fanatical populace of Paris, who kindled bonfires to show their joy at the death of Henry III., and whose resistance was stimulated by Spanish gold. Baffled in his attempt to obtain possession of his capital, he

CHAP. XXXVIII. read without rapture), and he will be fully convinced, not only how cruel but how impolitic it is to prosecute for religious opinions. There was no occasion to revoke the edict of Nantes ; the Jesuits needed only to have advised a plan similar to that which is contended for in the present case : make a law to render them incapable of office ; make another to punish them for not serving. If they accept, punish them (for it is admitted on all hands, that the defendant, in the cause before your Lordships, is prosecutable for taking the office upon him) —If they accept, punish them ; if they refuse, punish them : if they say yes, punish them ; if they say no, punish them. My Lords, this is a most exquisite dilemma, from which there is no escaping ; it is a trap a man cannot get out of ;—it is as

marched towards Dieppe, where his army was increased by 5000 English sent by his ally Elizabeth. In 1590 he gained a decisive victory at Ivry over the Duke of Mayenne, after electrifying his army with this brief harangue : " Fellow-soldiers, you are Frenchmen ; behold the enemy ! If you lose sight of your ensigns, rally around my plume : you will always find it on the high road to honor !" In 1592 he defeated a Spanish army under Farnese, the celebrated Prince of Parma, near Yvetot. His devotion to the interest of France (we may charitably suppose) now induced him to conciliate his enemies by a profession of the Roman Catholic religion in 1593,—the Protestants at the same time being assured of the continuance of his favor and protection. In 1594 he entered Paris without resistance, and granted a general pardon. After numerous battles and sieges, a treaty of peace was made at Vervins with Philip II. of Spain in 1598, and Henry was acknowledged by the whole kingdom. The same year he gave liberty of conscience to his subjects by the Edict of Nantes. Directing his attention to the finances, agriculture, and industrial arts, in which he was seconded by his minister Sully, he proved himself a wise and able statesman, and rendered himself very popular by his sympathy with the lower classes and his generosity to all. His popularity was increased by the spirited and eloquent public addresses which he made on various occasions, and by the frank simplicity of his manners. In 1600 he married an Italian princess, Marie de' Medici, having obtained a divorce from his first wife. The last half of his reign was peaceful and prosperous. He founded a hospital, a college, and a public library in Paris, and encouraged learned men, among whom were Casaubon and Grotius. His memory is more cherished by the French than that of any other of their kings, and his character is regarded by them as the beau-idéal of a Frenchman, a warrior, a monarch, and a statesman. On the 14th of May, 1610, while riding in his carriage, he was assassinated by a fanatic named Ravallac. He left the crown to his son, Louis XIII.—*Dict. of Eng. Hist.*

bad persecution as that of Procrustes :¹ if they are too short, stretch them ; if they are too long, lop them.” CHAP.
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This noble vindication of the rights of conscience produced an unanimous reversal of the decree of the Lord Mayor's Court, but caused considerable clamor in the City ; and Lord Mansfield was set down with many as “ little better than an infidel.”

What completed his bad name, was his direction to the jury in an action brought against a person, alleged to be a Roman Catholic priest, for celebrating mass, which, as the law then stood, subjected him, if found guilty, to a very severe penalty. I must confess that the effort made on this occasion to evade an obnoxious penal statute can hardly be justified, and that the better course would have been to allow it to be enforced, so that, its injustice being made manifest, it might more speedily be repealed. From the commentaries upon the evidence there can be little doubt that it was really sufficient to make out the case :

Lord Mansfield : “ There are here two questions for your consideration : 1st. Is the defendant a priest ? 2d. Did he say mass ? By the statute of Queen Elizabeth it is high treason for any man proved to be a Popish priest to breathe in this kingdom. By what was considered a mild enactment in the reign of William III.,² a Popish priest convicted of exercising

Acquittal
of a Roman
Catholic
priest
charged
with the
crime of
saying
mass.

1. Procrustes, a famous legendary robber of Attica, killed by Theseus near the Cephissus. He tied travellers on an iron bed, and if their length exceeded that of the bed, he used to cut it off : but if they were shorter, he had them stretched, to make their length equal to it. He is called by some Damastes and Polypemon.—*Lempriere's Classical Dict.*

2. William III., of Nassau, Prince of Orange and King of England, was born at The Hague 1650. He was the son of William, Prince of Orange, and Henrietta Maria, daughter of Charles I., King of England. He married the Princess Mary, daughter of James, Duke of York (afterwards James II.), and succeeded to the stadtholdership in 1672. He was also nominated general of the troops of Holland against Louis XIV., and made a vigorous resistance to the French armies under Luxembourg, whom he defeated in 1674, but was repulsed in his turn by the Prince de Condé. In 1688 the arbi-

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his functions is subject to fine and perpetual imprisonment. But, first, he is to be proved to be a priest, for, unless he be a priest, he cannot be touched for the enormity of saying mass ; and then, unless he be proved to have said mass, the crime of being a priest will escape with impunity. Now the only witness to the mass is Payne—a very illiterate man, who knows nothing of Latin, the language in which it is said : and, moreover, he, as informer, is witness in his own cause ; for, upon conviction, he is entitled to 100*l.* reward. Several others were called, but not one of them would venture to swear that he saw the defendant say mass. One swore that he sprinkled with holy water ; another, that he addressed some prayers to the Virgin Mary in English ; another, that he heard him preach, and, being asked what the sermon was about, observed that ‘it taught the people that good works were necessary to salvation—a doctrine which he looked upon as wholly at variance with the Protestant religion !’ Then, as to the defendant being a priest, you are not to infer that because he preached ; for laymen often perform this office with us, and a deacon may preach in the Church of Rome. A deacon may be a cardinal, —if he may not be Pope. A deacon may even administer some of their sacraments, and perform many of their services ; and we do not know that he may not elevate the Host—at least I do not know but he may, and I am persuaded you know nothing about it. If a deacon may perform all the ceremonies to which Payne swears, there is no evidence that the defendant is a priest. Why do they not call some one who was present at his ordination ? You must not infer that he is a priest because he said mass, and that he said mass because he is a

trary measures of James II. induced many disaffected nobles and others to invite over the Prince of Orange. He gladly embraced the occasion, and landed, without opposition, in Torbay, November 5, the same year. James, finding himself unsupported, withdrew to France, and William took possession of his throne, in conjunction with his wife, the daughter of that unfortunate monarch. The coronation took place April 11, 1689. The year following William went to Ireland, where he defeated James at the battle of the Boyne. In 1691 he headed the confederated army in the Netherlands, took Namur in 1695, and in 1697 he was acknowledged King of England by the treaty of Ryswick. On the death of Mary in 1693 the parliament confirmed to him the royal title. He fell from his horse, and broke his collar-bone, February 26, 1702, and died March 8th following.—*Cooper's Biog. Dict.*

priest.¹ At the Reformation, they thought it in some measure necessary to pass these penal laws ; for then the Pope had great power, and the Jesuits were then a very formidable body. Now the Pope has little power, and it seems to grow less every day. As for the Jesuits, they are now banished from almost every state in Europe. These penal laws were not meant to be enforced except at proper seasons, when there is a necessity for it ; or, more properly speaking, they were not meant to be enforced at all, but were merely made *in terrorem*. Now, when you have considered all these things, you will say if the evidence satisfies you. Take notice, if you bring him in *guilty* the punishment is very severe ; a dreadful punishment indeed ! Nothing less than perpetual imprisonment ! ”²

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The jury found a verdict of *Not Guilty* ; but many zealous Protestants were much scandalized, and rumors were spread that the Chief Justice was not only a Jacobite but a Papist, and some even asserted that he was a Jesuit in disguise.

He continued, nevertheless, steadily to support the cause of religious liberty ; and when the bill was brought forward to repeal so much of the act of William as condemns a Popish priest to fine and perpetual imprisonment for saying mass, and disqualifies a Papist to be the owner of land by inheritance or purchase, he expressed his entire approbation of it, although it passed with so little opposition, that there was no occasion for his taking any prominent part in supporting it.³

Bill to
mitigate
the penal
laws
against
Catholics.
A.D. 1778.

Measures which touch religious prejudices usually excite much clamor when first proposed, but when

1. This reminds me of the judge who, much disliking the game laws, and trying an action against a man for using a gun to kill game without being qualified, when it had been proved that the defendant, being in a stubble field with a pointer, fired his gun at a covey of partridges, and shot two of them, objected that there was no evidence that the gun was loaded with shot, and advised the jury to conclude that the birds fell down dead from the fright.

2. Holl. p. 176-179.

3. See 18 Geo. III. c. 61. Compare this with the trial of a Roman Catholic priest before Scroggs, *ante*.

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Anti-
Popery
riots and
petitions.

Violent
speech of
Lord
George
Gordon in
the House
of Com-
mons.

carried through are quietly acquiesced in. This Catholic Relief Bill, however, after having been quietly agreed to in parliament, excited a violent ebullition of bigotry almost all over Great Britain. The public peace was first disturbed in Scotland, where intemperate resolutions and addresses were voted by the General Assembly of the Kirk, dangerous riots ensued, and several Roman Catholic places of worship were burnt to the ground.¹ Lord George Gordon was the organ in the House of Commons of the Scotch anti-popery party, and, in presenting their petitions against the recent concessions to the followers of Antichrist, described the people of Scotland as "ripe for insurrection and rebellion," and affirmed that "the inhabitants fit to bear arms, a few Papists excepted, were ready to resist the powers of the Government, and had invited him to be their leader." Finally, he declared that "the religious constitution of Scotland was sacred against any law the parliament of Great Britain might enact for its alteration; that any such attempt was an actual breach of the fundamental conditions on which the union of the two kingdoms had been agreed to; and that the Scotch, being an independent nation when they entered into that treaty, henceforth resuming their ancient rights, would prefer death to slavery, and perish with arms in their hands or prevail in the contest."²

The South soon caught the fanatical flame. Prot-

1. The delusion of my countrymen on this occasion may be best understood from a proclamation by the Lord Provost and magistrates of Edinburgh, declaring that "to remove the fears and apprehensions which had distressed the minds of many well-meaning people in the metropolis, with regard to the repeal of the penal statutes against Papists, the public were informed that *the act of parliament passed for that purpose was totally laid aside*, and therefore it was expected that all peaceable subjects would carefully avoid connecting themselves with any tumultuous assembly for the future."

2. 20 Parl. Hist. 622.

estant clubs were formed in London and in all the great towns in England; and, to oppose Popery with sufficient force, "The General Protestant Association" was formed, of which Lord George Gordon was chosen president. When parliament again met, he not only inveighed against judges, but said, "The people were irritated and exasperated, being convinced that the King himself was a Papist"; and he averred that "if his Majesty did not keep his coronation oath, they would do more than abridge his revenue; they would cut off his head."

By the unchecked repetition of such ribaldry in debating societies, which were then the chief instruments of agitation, the populace were excited to a high pitch of frenzy, and were prepared for any violence. At last a "monster petition" to the House of Commons was got up against the spread of Popery; and it was resolved that "on Friday, the 2d of June, the whole body of the Protestant Association would assemble in St. George's Fields, with blue cockades in their hats, to distinguish real Protestants and friends of the petition from their enemies."

At the appointed time the petitioners, in blue cockades, mustered 60,000 strong, very near the place selected by the Chartists¹ with similar views on the

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Monster
petition
from the
Protestant
Association
to the
House of
Commons.

Meeting
in St.
George's
Fields.

1. Chartists (1838-48) was the name given to the members of a party in England who supported certain reforms which were generally known as the "People's Charter." The Charter consisted of six points, viz.: (1) manhood suffrage; (2) equal electoral districts; (3) vote by ballot; (4) annual parliaments; (5) abolition of property qualification for members; (6) payment of members. These points seem first to have been urged together at a meeting held at Birmingham on August 6, 1838, where the chief speakers were Attwood, Scholefield, and Feargus O'Connor. A similar meeting was held in London in the following September. During the following year the cause was advocated by tumultuous meetings and processions, which had to be put down by the law, and a petition, the size of a coach-wheel, said to be signed by a million and a quarter petitioners, was rolled into the House of Commons. Riots took place at Birmingham, Newcastle, and Newport. Feargus O'Connor was arrested. On

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XXXVIII. memorable 10th of April, 1848; and they intimated the same resolution, that "they would cross the Thames by one of the bridges, march in procession through the City, and present their petition with their own hands." They believed that the legislature would be overawed by their numbers, and they were determined to resist any attempt to control them. The Government, although fully aware of their intentions, forbade neither the meeting nor the procession,—neither stationed soldiers near the scene of apprehended danger, nor swore in special constables in aid of the parish beadles, who were then the only police in the metropolis,—nor took any step whatever for the preservation of the public tranquillity, more than if there had been an announcement of gambols in the streets by a band of

May 2, 1842, another monster petition, purporting to contain more than three million signatures, was brought to the House of Commons. Mr. T. Duncombe proposed that the petitioners should be heard at the bar by counsel, while Macaulay, Peel, and Roebuck spoke on the other side. After this the agitation slumbered till 1848, when a huge meeting was held on Kennington Common on April 10. The intention was to carry to the House of Commons a monster petition with five million signatures. There was great fear lest London should be the scene of a rising, and the Duke of Wellington took measures for protecting the Bank, Custom House, Exchange, Post Office, and other public buildings. A quarter of a million inhabitants of London were enrolled as special constables. The duke disposed his troops with masterly skill, so as to keep them out of sight. The meeting proved a failure, owing to dissensions between the leaders of the Chartists, and no disturbance took place. Similar precautions were again taken in June, but the threatened demonstration ended in smoke. On August 16 an arrest of armed Chartists was made at the "Orange Tree" public house, in Orange Street, London, and some more in Green Street. It was understood that there was a plot to attack the different clubs about midnight, and also the principal buildings in the metropolis. The chief ring-leaders were tried and punished. This latter outbreak of Chartism was connected with the revolutionary disturbances which took place throughout Europe in 1849. After this Chartism expired, and agitation took a different form. It is strange that reforms so unequal in importance, and some of them so little calculated to effect the end aimed at by their promoters, should have been advocated with such an amount of passion.—*Dict. of Eng. Hist.*

morris-dancers. Accordingly the procession, headed CHAP. XXXVIII. by Lord George Gordon, crossed London Bridge, marched through the City, and, before the usual hour for the assembling of the two Houses, had gained undisputed possession of Palace Yard and all the surrounding streets.

It is not for me to describe the scene in the House of Commons when the mob took possession of the lobby, amidst cries of "No Popery!" My duty confines me to the outrages of which Lord Mansfield was the witness and the object. On account of the illness of Lord Chancellor Thurlow, he was this day to preside as Speaker of the House of Lords. In Parliament Street, Assault on the Peers. being recognized by the mob, dreadful execrations were uttered against him as a notorious Papist, and the windows of his carriage were broken. By the vigor of his coachman he reached the door through which he was to ascend to his robing-room, and the messengers of the House afforded him some protection from the ruffians who threatened him. Nevertheless he was very ill treated, and when he came into the House he could not conceal his torn robe and his dishevelled wig. With calm dignity he took his place on the woolsack; for, though deficient in *moral*, he was possessed of great *personal* courage.

Other peers who followed had fared much worse. Lords Hillsborough, Townshend, and Stormont received many blows, and were in danger of their lives. The Archbishop of York had his lawn sleeves torn off and flung in his face. The Bishop of Lincoln, still more deeply suspected of popery, after his carriage had been broken to pieces, was carried in a fainting-fit into a private house in the neighborhood, from which he was obliged to fly in disguise over the roofs of the adjoining buildings. The Duke of Northumberland bringing along with him a gentleman habited in black, the cry

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was raised that this was "a Jesuit employed by him as his confessor"; upon which he was forced out of his carriage, was robbed of his watch and purse, and had his clothes torn to pieces. Prayers were said; and the thanksgiving introduced at the time of the Gunpowder Plot, and still daily repeated, was once more applicable: "We yield Thee praise and thanksgiving for our deliverance from those great and *apparent* dangers wherewith we were compassed in this place."

It happened, curiously enough, that the Lords were summoned to consider a bill of the Duke of Richmond for the Reform of Parliament by the introduction of annual parliaments and universal suffrage. At first they were resolved to play the part of Roman senators, and, if they were to be massacred, to meet their end all sitting in their places and in the discharge of their senatorial functions. Accordingly, the order of the day being read, the Duke of Richmond rose, and descanted some time on the defects and abuses of our representative system, and the certain cure which he had to propose for them. But his hearers were thinking much more of their personal safety than of disfranchising Old Sarum or giving members to Manchester, for the yells of the mob in Palace Yard became every moment more furious. At last Lord Montfort, looking ghastly, and covered all over with mud and hair-powder, burst into the assembly and began to vociferate. The Duke of Richmond complained of the interruption, and appealed to the woolsack for protection. Lord Mansfield tried to restore order, but Lord Montfort insisted on being heard "in affair of life and death, for Lord Boston, coming to his duty as a peer of parliament, had been dragged out of his carriage by the mob, who would certainly murder him if he were not immediately rescued from their violence." "At this instant," says a contemporaneous account, "it is hardly possible to

conceive a more grotesque appearance than the House exhibited. Some of their Lordships with their hair about their shoulders; others smothered with dirt; most of them as pale as the Ghost in Halmet; and all of them standing up in their several places, and speaking at the same instant. One lord proposed to send for the guards, another for the justices or civil magistrates; many crying out 'Adjourn! adjourn!' while the skies resounded with the huzzas, shoutings, or hootings and hissings in Palace Yard. This scene of unprecedented alarm continued for about half an hour."¹

Long after the time when it might have been expected that Lord Boston had met his fate, Lord Townshend offered to be one that would go in a body and attempt his rescue. The Duke of Richmond volunteered to be of the party, but said "if they went as a *house* the mace ought to be carried before the noble and learned Lord on the woolsack, who must go at their head." *Lord Mansfield*: "My Lords, I am ready to do all that your Lordships and my duty may require of me." The Duke of Gloucester disapproved of the Speaker and the mace going down, as, besides the possible danger to the person of the noble and learned Lord on the woolsack, the mob were so outrageous, that they would pay no more respect to the mace than to such of their Lordships as had been so dreadfully maltreated. At this moment Lord Boston made his appearance in the House, having sustained very little damage, for he had engaged some of the theological leaders of the mob in a controversy on the question "whether the Pope really be Antichrist?" and he had escaped merely with dishevelled hair and his clothes being covered over with hair-powder. He gave, however, a very formidable account of the increasing numbers and fury of the assailants.

Great
courage
displayed
by Lord
Mansfield.

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After a long altercation between the opposition and ministerial Peers respecting the misconduct of the Government in taking no precautions to preserve the public peace, Lord Mansfield ordered the Black Rod¹ to summon before them the High Bailiff of Westminster. This officer soon attended, and stated that "he had received no communication from the Secretary of State, but, attracted by the disturbance, he had done his utmost to restore tranquillity: as yet, he had only been able to collect six constables, who were waiting in the Guildhall till more could be fetched, as no good could be done with so small a force."

Lord Mansfield: "Perhaps you are not to be blamed for what has hitherto occurred; but I now command you, in the name of this House, to go round immediately to all justices of the peace in the city of Westminster, and in this division of the county of Middlesex, and instruct them to order all the King's loyal subjects of competent age to assist in quelling this riot, that life may be preserved, and the law may be respected."

The Peers, however, were rather frightened than reassured: the Duke of Richmond abandoning his motion, they insisted on an immediate adjournment, and, with the exception of the noble and learned Lord on the woolsack, they all acted on the maxim of *sauve qui peut*.² "The adjournment having taken place at nine o'clock," says the Parliamentary History, "the House gradually thinned, most of the Lords having

1. Black-rod.—In England the usher belonging to the Order of the Garter, more fully styled gentleman usher of the black rod; so called from the black rod which he carries. He is of the King's chamber and usher of parliament. His deputy is styled the yeoman usher. They are the official messengers of the House of Lords; and either the gentleman or the yeoman usher summons the Commons to the House of Lords when the royal assent is given to bills, and also execute orders for the commitment of persons guilty of breach of privilege and contempt. The name is also given to similar functionaries in the legislatures of the Dominion of Canada and other British colonies.—*Century Dict.*

2. "Save himself who can."

either retired to the coffee-houses or gone off in hackney carriages, while others walked home under the favor of the dusk of the evening. But the most remarkable circumstance was, that Lord Mansfield, in the seventy-sixth year of his age, was left alone and unprotected, except by the officers of the House and his own servants."¹

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He is
deserted by
all his
brother
peers.

The art of *improvising* revolutions had not then been invented, or Lord George Gordon and his associates, this very evening, might have installed a provisional government, constituted a committee of public safety, and called an assembly of the people, to be returned only by true Protestants to reenact and to aggravate all the laws against Papists. They had the metropolis entirely in their power, for the House of Commons had likewise pusillanimously resorted to the expedient of an *adjournment* to avoid the open disgrace of being overwhelmed by brute violence; and there was no more efficient protection for either branch of the legislature than the six constables in the Guildhall at Westminster. But, strange to say, when the "Associates" ascertained that both Houses had adjourned, content with their triumph, they marched off to other quarters of the town, and, having amused themselves with burning down the chapels of the Sardinian and Bavarian ambassadors, in which the idolatrous sacrifice of the mass had been performed, they dispersed for the night. Thus Lord Mansfield, although seemingly abandoned to destruction by all his brother peers, after waiting about two hours in his private room, and drinking a cup of tea, drove home to his house in Bloomsbury Square as quietly as if, since time began, Parliament Street and the Strand had only listened to the drowsy

He gets
home in
safety.

1. Vol. xxi. p. 672. I observe with great pride that on this occasion the "Law Lord" showed much more courage than any other member of the House, spiritual or temporal.

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notes of the watchman calling the hour and announcing a cloudy or a starlight night, nor had ever been startled by the cry of "NO POPERY!"

But this was only the lull of the tempest. Day after day the violence of the mob increased. Being still unchecked by civil or military authority, they altered their views, and, Lord George Gordon having abdicated, he was replaced by more dangerous leaders. Many now joined the ranks of the insurgents who were indifferent about religion, and thought only of devastation and plunder. On Tuesday the 6th of June, the two Houses, anticipating the fate which befell the French Chamber of Deputies on the 24th of February, 1848, of being forcibly dispersed, adjourned for a fortnight, by which time it was hoped that order in the metropolis might be restored. But the fury of the insurgents was increased when all legitimate authority seemed to tremble before them. They likewise became more and more exasperated against Lord Mansfield, whose demerits as a friend to religious liberty were greatly aggravated in their eyes by rumors of the determination and firmness he had displayed on the evening when the riots first began.

Next day the insurrection was at its height. Newgate¹ and the other prisons of the metropolis were

1. Where Newgate Street (now chiefly devoted to butchers) is crossed by Giltspur Street and the Old Bailey stood the New Gate, one of the five principal gates of the city, which was also celebrated as a prison. Its first story, over the arch, was, according to custom, "common to all prisoners, to walk in and beg out of." Ellwood the Quaker narrates the horrors of the nights in the gate-prison, where all were crowded into one room, and "the breath and steam which came from so many bodies, of different ages, conditions, and constitutions, packed up so close together, was sufficient to cause sickness." In fact, in the Plague fifty-two persons died over Newgate alone. The gate-house was the origin of the existing Newgate Prison, which now looms, grim and grimy, at the end of Holborn Viaduct, and whose very name is fraught with reminiscences of Claude Duval, Dick Turpin, Jack Sheppard, Greenacre, Courvoisier, Franz Müller,

stormed, and all their inmates set at liberty; the Inns of Court were besieged; preparations were made for attacking the Bank of England;¹ distilleries belong-

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and others celebrated in the annals of crime. The prison was rebuilt 1770-80 under George Dance, architect of the Mansion House. His chef-d'œuvre was the design for Newgate, which, though only a prison, and pretending to be nothing else, is still one of the best public buildings in the metropolis. It attained this eminence by a process which amounts as much to a discovery on the part of its architect as Columbus's celebrated invention of making an egg stand on its end—by his simply setting his mind to think of the purpose to which his building was to be appropriated. There is nothing in it but two great windowless blocks, each ninety feet square, and between them a very commonplace jailer's residence, five windows wide, and five stories high, and two simple entrances. With these slight materials he has made up a façade two hundred and ninety-seven feet in extent, and satisfied every requisite of good architecture." (Fergusson). On the south front are allegorical statues of Concord, Mercy, Justice, Truth, Peace, and Plenty—interesting as having once adorned the New Gate, which also bore a now lost statue of Sir R. Whittington with the renowned cat of his story. Those who have been imprisoned here include Sackville and Wither the poets; Penn, for street preaching; De Foe, for publishing his "Shortest Way with Dissenters"; Jack Sheppard, who was painted here by Sir James Thornhill; and Dr. Dodd, who preached his own funeral sermon in the chapel (on Acts xv. 23) before he was hanged for forgery in 1777. Lord George Gordon was imprisoned in Newgate for a libel on the Queen of France, and died within its walls of the jail distemper. In the chapel is a "condemned bench," only used for the prisoners under sentence of death. There are those still living who remember as many as twenty-one prisoners (when men were hung for stealing a handkerchief) sitting on the condemned bench at once. Since executions have ceased to be carried out at Tyburn, they have taken place here: one of the most important has been that of Bellingham, for the murder of Mr. Percival. The late amelioration in the condition of prisoners in Newgate is in great measure due to the exertions of Mrs. Fry, who has left a terrible account of their state even in 1838.—*Hare's Walks in London*.

1. We must cross the space in front of the Exchange to visit the Bank of England. The conception of the Bank originated with Paterson, a Scotchman, in 1691. Its small business was first transacted in the Mercers' Hall, then in the Grocers' Hall, and in 1734 was moved to the buildings which form the back of the present court towards Threadneedle Street. The modern buildings, covering nearly three acres, were designed in 1788 by Sir John Soane; they are feeble in design and lose in effect from not being raised on a terrace. "The Garden Court," which has a fountain, encloses the churchyard of St. Christopher le Stocks, pulled down when the Bank was

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ing to Roman Catholics were set on fire; and the kennels ran gin, by which thousands in the streets were degraded into a state of beastly intoxication. Some bodies of soldiers were shown to the rioters to irritate them without doing anything to check their excesses,—and, after this ill-judged activity, the Government seemed completely paralyzed. Still the great object of vengeance was Lord Mansfield,—the fanatics abhorring him for his sentiments in favor of religious toleration, and the thieves regarding him with apprehension as the president of the first criminal court in the kingdom. They did not intimate any intention of violence to his person, but they now openly declared that, before morning, they would burn his house in Bloomsbury Square, and all the property it contained. He had continued to reside there with his family, unaware of his danger.—According to the example of his predecessors, the Grand Justiciars and former Chief Justices, down to the time of Lord Holt, he ought, as supreme conservator of the peace, to have called forth the civil power, and, marching in person at the head of his levies, have taken the necessary steps for quelling the insurrection; but, ever after the accession of the House of Hanover, such functions were left entirely to the executive government, and he had not in any way interfered since the night of the assault upon the House of Lords. Afterwards he used to say “that perhaps some blame might have attached upon himself as well as on others in authority, for their forbearance in not having directed force to have been, *at the first moment*, repelled by force,—it being the highest humanity to check the infancy of tumults.”¹

built. The taxes are received, the interest of the national debt paid, and the business of the Exchequer transacted at the Bank. The “Old Lady in Threadneedle Street” was long its popular name, but is now almost forgotten.—*Hare's Walks in London*, vol. i. p. 256.

1. Erskine's Speeches, vol. iii. p. 33.

The threatenings of the mob being narrated to Sir John Hawkins¹ and another Middlesex magistrate, they proceeded, with a detachment of the guards, to Bloomsbury Square. Obtaining an interview with Lord Mansfield, they informed him of his danger, and proposed to station the soldiers in and around his house. To this he strongly objected, insisting that they should be marched off and concealed in a church at some distance. He was not actuated by any pedantic scruples about the lawfulness of employing the military on such an occasion, but he thought that the mob might be exasperated by the appearance of red coats, and trusted to the reverence habitually shown in England to the judges of the land in times of the greatest excitement and by the most abandoned classes. A pause of nearly half an hour occurred, and hopes were entertained that the alarm was groundless,—when distant yells were heard; and it was ascertained that an immense multitude, carrying torches and combustibles, were marching down Holborn,² and entering

1. Sir John Hawkins was born in London March 30, 1719. He was brought up as a surveyor and builder, but quitted that occupation for the law, which he practised with reputation till 1759. In 1761 he was put into the commission of the peace for Middlesex, and soon after distinguished himself so successfully in resisting a project of the corporation of London as procured him the honor of being elected chairman of the quarter-sessions. He also gained credit by his conduct in suppressing some riots in 1769, for which he received the honor of knighthood. Sir John was the early friend of Dr. Johnson, and one of the first members of his literary club. He also drew up his will, and was gratefully remembered by that excellent man, whose life he wrote for an edition of his works. Besides this he compiled "The History of Music," in 5 vols. 4to., and edited "Walton's Angler," enriched with curious notes. He was an excellent judge of music, and also fond of the sport so admirably described in the last-mentioned work. Died May 21, 1789.—*Cooper's Biog. Dict.*

2. Holborn, which escaped the Great Fire, still contains many old houses anterior to the reign of Charles II., those beyond Holborn Bars to the west being outside the liberties of the city. Milton lived here from 1647 to 1649, and here wrote his "Tenure of Kings and Magistrates," "Eiconoclastes," and the "Defence of the People

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His house
is burnt
down by
the mob.

Bloomsbury Square. Lord Mansfield did not immediately fly,—not even when he saw them making for the north-east corner of the square, in which his house stood ; but when they began to batter his outer door, he retreated by a back passage with the Countess ; and he had hardly escaped from their fury when their leaders were seen at the upper windows, tearing down and throwing over furniture, curtains, hangings, pictures, books, papers, and everything they could lay their hands on, likely to serve as fuel for the fire which was already blazing below. In this instance resembling a Paris mob, they declared that there was to be no pillage, and that they were acting on principle. Pilferers were punished ; and one ragged incendiary, to show his disinterestedness, threw into the burning

of England against Salmasius." The hill of Holborn was called the " Heavy Hill," for by it the condemned were driven to Tyburn from Newgate and the Tower, wearing on their breasts the nosegays which, by old custom, were always presented to them as they reached St. Sepulchre's Church. Often their progress was almost triumphal as they passed between the crowded windows on either side the way. Gay in the " Beggars' Opera " makes one of his characters, Polly, say of Captain Macheath, "Methinks I see him already in the cart, sweeter and more lovely than the nosegay in his hand ! I hear the crowd extolling his resolution and intrepidity ! What volleys of sighs are sent from the windows of Holborn that so comely a youth should be brought to the sack !" And Swift, describing the last hours of Tom Clinch, says :

" As clever Tom Clinch, while the rabble was bawling,
Rode stately through Holborn to die at his calling,
He stopt at the George for a bottle of sack,
And promised to pay for it when he came back.
His waistcoat, and stockings, and breeches were white ;
His cap had a new cherry-ribbon to tie 't.
The maids to the doors and the balconies ran,
And said ' Lack-a-day, he's a proper young man !'
And as from the windows the ladies he spied,
Like a beau in a box he bow'd low on each side !
* * * * *

Then follow the practice of clever Tom Clinch,
Who hung like a hero, and never would flinch."

—*Hare's Walks in London.*

pile a valuable piece of silver plate and a large sum of money in gold, which he swore should not "go in payment of masses." Flames were speedily vomited from every window; and, as no attempt was or could be made to arrest their progress, long before morning nothing of the stately structure remained but the bare and blackened skeleton of the walls.¹

Lord Mansfield and the public sustained a heavy loss on this occasion. His library contained the collection of books he had been making from the time he was a boy at Perth school, many of them the cherished memorials of early friendship,—others rendered invaluable by remarks in the margin, in the handwriting of Pope or Bolingbroke, or some other of the illustrious deceased wits and statesmen with whom he had been familiar. Along with them perished the letters between himself, his family, and his friends, which he had been preserving for half a century as materials for Memoirs of his times. It is likewise believed that he had amused his leisure by writing, for posthumous publication, several treatises on juridical subjects, and historical essays, filling up the outline of the admirable sketch he had given in his "Letters of Advice to the Duke of Portland." All his MSS. had remained in his town house, and they were all consumed through the reckless fury of illiterate wretches, who were incapable of

1. Welsby, p. 432. The house of Lord Chancellor Thurlow, in Ormond Street, was likewise threatened, but escaped. According to a story circulated at the time, and often repeated since, it was saved by his manœuvre of marching and counter-marching a sergeant's guard, so as to make the mob believe that he was defended by a great army. Holliday concludes his narrative of Lord Mansfield's disaster by observing—"In this instance we can only lament that so great a lawyer and statesman was not, in this hour of imminent danger, so great a general as the then Lord Chancellor"—(p. 411). But Thurlow was not by any means equally unpopular; for, though indifferent about religion, and despising the restraints of morality, he had always shown himself a very zealous friend of the Established Church and a determined enemy of Dissenters.

CHAP. XXXVIII. forming a notion of the irreparable mischief they were committing.

The public sympathy was testified by many metrical effusions, which appeared in the newspapers. Of these, the most pleasing were the following stanzas by Cowper:¹

1. William Cowper, a poet, was the son of the Rev. John Cowper, rector of Great Berkhamstead, in Hertfordshire, and was born there Nov. 26, 1731. He was from his birth of a very delicate constitution, and through life possessed a frame of uncommon sensibility. After going through a country school he was sent to that of Westminster, and in 1749 was articled to an attorney for three years, at the end of which time he entered the Temple, but never followed the legal profession. Here he renewed an intimacy with his schoolfellows, Churchill, Colman, Thornton, and Lloyd, and contributed some papers to the 'Connoisseur.' At the age of thirty-four he was nominated a clerk in the House of Lords; but an unconquerable timidity prevented him from undertaking the office, on which account he was appointed clerk of the journals, a situation which, it was supposed, would require no personal attendance; but an occasion happening that rendered it necessary for the clerk to appear at the bar of the House, it had such an effect on his nerves that he was obliged to resign the place. Insanity followed, and it was found necessary to place him under Dr. Cotton, at St. Albans, by whose attentions he recovered his mental faculties. In 1765 he settled at Huntingdon, where he formed an acquaintance with a clergyman of the name of Unwin, in whose family he became an inmate. When that gentleman was killed by a fall from his horse in 1767, Cowper and Mrs. Unwin went to Olney, in Buckinghamshire, where they contracted an intimacy with the Rev. John Newton, curate of that parish. To a collection of hymns, published by Mr. Newton, our poet contributed no fewer than sixty-eight pieces. In 1770 he lost his brother John, who died at Cambridge. From this period little occurs in the life of the poet, who suffered much from severe paroxysms of religious despondency. His recovery was slow, but at last he gained a calm tranquillity, which lasted some years. To beguile his hours and employ his mind, he was urged by his friends to write frequently; the result of which was the publication of a volume of poems in 1782, anonymously. Some time before this Cowper had formed an acquaintance with the widow of Sir Robert Austen, who resided at the parsonage house of Olney. To this lady the world is indebted for the ballad of John Gilpin, which she related to amuse Cowper, who turned it into verse. But Lady Austen conferred a greater favor on the public by suggesting to him the poem entitled "The Task." This piece was sent to the press in 1784, in 8vo, in a second volume of his works. He now began a translation of Homer into blank verse, which was published by subscription in 1791, in 2 vols. 4to; but he was so dissatisfied with it as to begin the work anew,

"So, then—the Vandals of our isle,
Sworn foes to sense and law,
Have burnt to dust a nobler pile
Than ever Roman saw !

"And Murray sighs o'er Pope and Swift,
And many a treasure more,
The well-judg'd purchase and the gift,
That grac'd his letter'd store.

"Their pages mangled, burnt, and torn,
Their loss was his alone ;
But ages yet to come shall mourn
The burning of his own."

* * * * *

"When wit and genius meet their doom
In all-devouring flame,
They tell us of the fate of Rome,
And bid us fear the same.

"O'er Murray's loss the Muses wept :
They felt the rude alarm ;
Yet bless'd the guardian care that kept
His sacred head from harm.

"There memory, like the bee that's fed
From Flora's balmy store,
The quintessence of all he read
Had treasured up before.

"The lawless herd, with fury blind,
Have done him cruel wrong :
The flowers are gone ; but still we find
The honey on his tongue."

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Stanzas by
Cowper on
the burning
of Lord
Mansfield's
library.

The venerable Chief Justice must have been most of all gratified by the filial solicitude of the members of his own profession. For a few days after the fire he did not appear in court. "The reverential silence" (says ^{June 14,} Lord Glenbervie, then the reporter of his decisions) ^{1780.}

and this revision has been since printed. In 1786 Mr. Cowper and Mrs. Unwin removed to Weston, in Northamptonshire, where our poet undertook an edition of Milton, which he afterwards abandoned. In 1794 he relapsed into a state of mental derangement, and, though a pension of three hundred a year was settled upon him, he was not in a condition to feel any pleasure from the favor. After lingering out a painful existence, with short but glimmering intervals of reason, he died at Dereham, in Norfolk, April 25, 1800. The "Life and Letters of Cowper" were published by his friend Mr. Hayley, but Southey's Life of him is far the best.—*Cooper's Biog. Dict.*

CHAP. XXXVIII. "which was observed when his lordship resumed his place on the bench, was expressive of sentiments of condolence and respect more affecting than the most eloquent address the occasion could have suggested."¹

It may be proper here to mention, that while many others, who had been his fellow-sufferers, brought actions against the hundred for an indemnity, he waived this remedy, thinking his real loss to be inappreciable, and, on account of his great wealth, not wishing to throw any part of the pecuniary damage on shoulders less able to bear it. In answer to an application from the solicitor to the Treasury, in consequence of a vote of the House of Commons for an estimate of the value of his property which had been destroyed, he said,—

"Besides what is irreparable, my pecuniary loss is great. I apprehended no danger, and therefore took no precaution. But, how great soever that loss may be, I think it does not become me to claim or expect reparation from the state. I have made up my mind to my misfortune as I ought; with this consolation, that it came from those whose object manifestly was general confusion and destruction at home, in addition to a dangerous and complicated war abroad. If I should lay before you any account or computation of the pecuniary damage I have sustained, it might seem a claim or expectation of being indemnified. Therefore you will have no further trouble on this subject from, etc.

"MANSFIELD."

1. The amount of that part of Lord Mansfield's loss which might have been estimated, and was capable of a compensation in money, is known to have been very great. This he had a right to recover against the Hundred (under 1 Geo. I. 2, c. 5, § 6). Many others have taken that course; but his Lordship has thought it more consistent with the dignity of his character not to resort to the indemnification provided by the legislature. His sentiments on the subject of a reparation from the state were communicated to the Board of Works in a letter (dated Kenwood, August 12, 1780) written in consequence of an application which they had made to him (as one of the principal sufferers), pursuant to directions from the Treasury (dated July 18, 1780) founded on a vote of the House of Commons (July 6, 1780), requesting him to state the nature and amount of his loss.—2 *Douglas* 436 n.

One good effect produced by the conflagration in Bloomsbury Square was, that it roused the Government from lethargy. A council was called, at which the King presided in person and showed more energy than any of his ministers. Having obtained the opinion of Mr. Wedderburn, the Attorney General, that by the law of England the force necessary to prevent the perpetration of crimes may be lawfully used, and that all the subjects of the realm, whether soldiers or civilians, may be lawfully employed in restoring and preserving the public peace, he gave orders to the military to act with the requisite vigor; and several regiments of militia, as well as of the line, having arrived from distant parts of the kingdom, a few volleys, well directed, speedily restored the metropolis to a state of the most perfect tranquillity.

CHAP.
XXXVIII.
The riots
are at last
quelled.

June 8,
1780.

When the two Houses again met, according to the adjournment, the King said to them, in a speech from the throne,—

“The outrages committed by bands of lawless and desperate men, in various parts of this metropolis, broke forth with such violence into acts of felony and treason, and had so far overborne all civil authority, and threatened so directly the immediate subversion of all legal power, the destruction of all property, and the confusion of every order in the state, that I found myself obliged by every tie of duty and affection to my people to suppress, in every part, those rebellious insurrections, and to provide for the public safety by the most effectual and immediate application of the force intrusted to me by Parliament.”

The address, approving of what his Majesty had done, meeting with some opposition from the Duke of Manchester¹ and other peers, who intimated an opinion

1. George Montagu, fourth Duke of Manchester (1737–1788), son of Robert, third duke, vice-chamberlain to Queen Caroline and Queen Charlotte, by Harriet, daughter and coheirress of Edmund Dunch, Esq., of Little Wittenham, Berkshire, was born on April 6, 1737. As Viscount Mandeville he was granted an ensign's commis-

CHAP. XXXVIII. that the employment of the military to quell riots by firing on the people could only be justified, if at all, by

sion July 13, 1757, and supported George III.'s train at his coronation. On March 28, 1761, he was elected M.P. for Huntingdonshire in the Whig interest. Soon after succeeding to the dukedom, May 10, 1762, he was appointed lord lieutenant of the county and high steward of Godmanchester, as well as collector of the subsidies of tonnage and poundage outwards in the port of London. He was colonel of the Huntingdonshire regiment of militia from 1758 (Home Office Papers, 1760-65, p. 22). In 1763 he succeeded Rockingham as a lord of the bedchamber, and held the appointment till January 17, 1770. After the fall of the Grafton ministry he went into opposition, acting usually with the Whigs of the Rockingham section. He signed their protests, and took a prominent part in the debates of the House of Lords. On December 10, 1770, he moved an address to the crown, praying for the immediate despatch of forces to protect Gibraltar, Minorca, and Jamaica, and is said to have spoken "with an uncommon degree of eloquence," although his speech was interrupted by a motion to "clear the house," and a scene of great confusion followed (Parl. Hist. xvi. 1317). The motion was rejected on the following day by 40 to 14 (*ibid.* pp. 1319-1320). He subsequently made vain efforts to improve the arrangements for the admission of members of the Lower House and other strangers to the Lords' debates. On March 30, 1771, he went with Rockingham, Portland, Burke, and other members of the opposition to the Tower to see Crosby, the lord mayor, and Alderman Oliver, who were confined there. Throughout the struggle with America he sided with the colonies. On April 20, 1774, he wrote to Rockingham that he was "convinced that the northern governments of America do call loudly for reformation." On February 1, 1775, he spoke in favor of Chatham's bill for a provisional settlement with America, and "drew the attention of every side of the House" (*ibid.* xviii. 215). In the same session, on March 16, he vehemently condemned the bill restraining the trade of the New England colonies (*ibid.* p. 433); and on March 21 spoke against treating the southern colonies with greater favor than the northern (*ibid.* pp. 455-6). On May 18 he presented a memorial from the New York assembly, part of which he read (*ibid.* pp. 666, 684). On November 1 he moved "that the bringing into any part of the dominions of the crown of Great Britain the electoral troops of his Majesty or any other foreign power is dangerous and unconstitutional." The motion was lost by 75 to 32 (*ibid.* pp. 798 et seq.).

During 1776 he was equally active. In supporting a motion by the Duke of Richmond on March 5 to suspend hostilities with the colonists he declared that it was too late to treat them as rebels—they were "a powerful nation, a formidable enemy." The Americans, he believed, dreaded to be forced into independency (*ibid.* pp. 1202-03). At the opening of the next session (October) Manchester, in supporting Rockingham's amendment to the address, gave partic-

martial law proclaimed under a special exercise of ^{CHAP.} the royal prerogative, Lord Mansfield rose, while every _{XXXVIII.} eye was fixed upon him, and all held their breath, eager to catch every accent that fell from his lips. Considering his age, his experience, his reputation as an oracle of the common law, the perils to which he had recently been exposed, and the loss which he had suffered, we

ulars of the preparations that France was making to help America (Parl. Hist. pp. 1370-2). Despite his connection with the Rockingham Whigs, Manchester admired Chatham, and supported him on the last two great occasions on which he spoke, viz., May 30 and December 5, 1777 (ibid. xix. 503). On March 17, when moving an amendment to the address, he declared that the incapacity of ministers had brought us "to the melancholy dilemma of not being in a state to make peace or prosecute war (ibid. pp. 915 et seq.). On March 23 he supported the Duke of Richmond's motion for an address to the crown requesting the withdrawal of troops from America. In 1779 he foretold that Ireland was likely to assume the same attitude as America, and that the claims to independence of parliament put forward on behalf of the King might end in a civil war in England. Manchester differed with most of his political friends in deprecating the relief of the Roman Catholics. He was one of a minority of three who voted against a bill prohibiting the holding of debates and selling of provisions on Sunday (ibid. xxiii. 284). In January, 1781, he wrote to Rockingham that it was hopeless for the opposition to make any further attacks upon ministers until his party could show "at least a little unanimity." When, in April, 1782, Rockingham became once more Premier, Manchester was appointed lord chamberlain, and also became a privy councillor (ibid. p. 65). On April 9, 1783 he was named ambassador to France, to treat for peace, and his action was generally approved; but he resisted Pitt's commercial treaty of 1786. He caught a chill after attending the trial of Warren Hastings, and some days later took cold at a cricket match. He died at Brighton on September 2, 1788, and was buried at Kimbolton, Huntingdonshire, on September 14. A portrait by Peters, engraved by Leney, represents him in his robes as grand master of masons, holding a compass. Another portrait, depicting him as lord chamberlain, with his wand of office, was painted by C. G. Stuart and engraved by John Jones. Wraxall thus characterizes him: "His figure, which was noble, his manners affable and corresponding with his high rank, prepossessed in his favor, but his fortune bore no proportion to his dignity. Though a man of very dissipated habits, and unaccustomed to diplomatic business, he did not want talents." Manchester married, on October 22, 1762, Elizabeth, eldest daughter of Sir Francis Dashwood, Bart. She died on June 26, 1832, having had four sons and two daughters.—*Dict. of Nat. Biog.*

CHAP. need not wonder at the interest which he now ex-
 XXXVIII. cited.

June 19,
 1780.
 Lord
 Mansfield's
 speech vin-
 dicating
 the em-
 ployment
 of the
 military for
 that pur-
 pose.

"My Lords," said he, "I wish it had not fallen to my lot to address you on this occasion, but I must not shrink from a task which duty imposes upon me. That the law may be obeyed, it must be known. My Lords, the noble Duke who last addressed the House is utterly mistaken in supposing that the employment of the military to suppress the late riots proceeded from any extraordinary exertion of the royal prerogative, and in his inference that we were living under martial law. I hold that his Majesty, in the orders he issued by the advice of his ministers, acted perfectly and strictly according to the common law of the land and the principles of the constitution; and I will give you my reasons within as short a compass as possible. I have not consulted books; *indeed, I have no books to consult.* [Deep sensation.] But, as well as my memory serves me, let us see, my Lords, how the facts and the law stand, and reflect a light upon each other. The late riots were formed upon a systematic plan to usurp the government of the country; the rioters levied war against the King in his realm, and committed overt acts of high treason. Insurrections for a general purpose—as, to redress grievances, real or pretended,—amount to a levying of war against the King, though they have no design against his person, because they invade his prerogative, and the power of parliament, which he represents. The insurgents avowedly sought by force to compel the legislature to repeal a statute; they violently assaulted the two Houses of Parliament while engaged in legislative deliberation; and, when left to themselves by the adjournment of the two Houses and the inaction of the executive government, *which it is not my part to censure* [sensation],—without formally promulgating a new constitution, they for some days usurped supreme authority, and acted as masters of this metropolis. Besides high treason, my Lords, they were guilty of many acts of felony, by burning private houses, and stealing as well as destroying private property. Here, then, my Lords, we shall find the true ground upon which his Majesty (by the advice of his ministers, I presume) proceeded. I do not pretend to speak from any previous knowledge or communication, for I never was present at any consultation upon the subject, or

summoned to attend, or asked my opinion, or heard of the reasons which induced the Government to remain passive so long and to act at last. [Wonder expressed by the bystanders, and scornful glances cast upon the Treasury bench.] But, my Lords, I presume it is known to his Majesty's confidential servants, that every individual, in his private capacity, may lawfully interfere to suppress a riot, much more to prevent acts of felony, treason, and rebellion. Not only is he authorized to interfere for such a purpose, but it is his duty to do so; and, if called upon by a magistrate, he is punishable in case of refusal. What any single individual may lawfully do for the prevention of crime and preservation of the public peace, may be done by any number assembled to perform their duty as good citizens. It is the peculiar business of all constables to apprehend rioters, to endeavor to disperse all unlawful assemblies, and, in case of resistance, to attack, wound, nay, kill those who continue to resist;—taking care not to commit unnecessary violence, or to abuse the power legally vested in them. Every one is justified in doing what is necessary for the faithful discharge of the duties annexed to his office, although he is doubly culpable if he wantonly commits an illegal act under the color or pretext of law. The persons who assisted in the suppression of these tumults are to be considered mere private individuals, acting as duty required. My Lords, we have not been living under martial law, but under that law which it has long been my sacred function to administer. For any violation of that law, the offenders are amenable to our ordinary courts of justice, and may be tried before a jury of their countrymen. Supposing a soldier, or any other military person, who acted in the course of the late riots, had exceeded the powers with which he was invested, I have not a single doubt that he may be punished, not by a court-martial, but upon an indictment to be found by the grand inquest of the City of London or the County of Middlesex, and disposed of before the ermined judges sitting in Justice Hall at the Old Bailey. Consequently, the idea is false that we are living under a military government, or that, since the commencement of the riots, any part of the laws or of the constitution has been suspended or dispensed with. I believe that much mischief has arisen from a misconception of the Riot Act,¹ which enacts that, after procla-

CHAP.
XXXVIII.

1. "Reading the Riot Act" may be done in this country, in those

CHAP.
XXXVIII.

mation made that persons present at a riotous assembly shall depart to their homes, those who remain there above an hour afterwards shall be guilty of felony, and liable to suffer death. From this it has been imagined that the military cannot act, whatever crimes may be committed in their sight, till an hour after such a proclamation has been made, or, as it is termed, 'the Riot Act is read.' But the Riot Act only introduces a new offence—remaining an hour after the proclamation—without qualifying any preëxisting law, or abridging the means which before existed for preventing or punishing crimes.

"I am fully persuaded that none of your Lordships will think that the acts of violence lately directed against myself can influence my exposition of the law, or can alter my principles. Although it so happened that I never once spoke in this House in support of the obnoxious bill to mitigate Roman Catholic penalties, and, as far as I recollect, I was not present when it passed through any of its stages, I approved, and I approve, of its principle. My desire to disturb no man for conscience' sake is pretty well known, and, I hope, will be had in remembrance. I have no leaning to Roman Catholics. Many of those who are supposed to have directed the late mobs are

States in which the common law prevails, by a proclamation made in the name of the Commonwealth, State, or people, following in other respects the form in 1 Geo. I. st. 2, c. 5; or by following the directions of the State statute, if any. Sheriff Martin, who recently dispersed a mob at Hazleton, Pa., is reported to have said: "I took out my copy of the Riot Act and tried to read it. I could not get a chance, they pressed me so close, and then I waved it over my head and started to explain it to them. I know it almost by heart." The Chicago anarchists at the Haymarket meeting had the Riot Act read to them in these words: "I command you, in the name of the people of the State of Illinois, to immediately and peaceably disperse." These words, as is declared in *Spies v. People*, 122 Ill. 154, are the same as those used in the Illinois statute, declaring that when twelve or more armed persons, or thirty or more armed or unarmed, unlawfully, riotously, or tumultuously assemble in any city, it shall be the duty of each of the municipal officers "to go among the persons so assembled, . . . and in the name of the State command them immediately to disperse." Similar provisions are found in the New York Code of Criminal Procedure and in the statutes of other States. In a New Hampshire case it has been held that rioting is none the less an offence because no proclamation was made, and that refusal to disperse after such proclamation has been made is a new offence. And it has been so held in England.—*Law Notes*, Oct., 1897.

not ignorant of my general tolerating principles when the toleration of sectaries does not portend danger to the state. I have shown equal favor to dissenters from the established Church of all denominations ; and, in particular, those called *Methodists* can bear witness that I have always reprobated attempts to molest them in the celebration of their religious worship as unworthy of the apostolical protestantism which we profess; the purity of whose doctrines, and not persecution, should be the only incentive to bring proselytes into her bosom. I was, and am, of the same opinion with respect to the Roman Catholics ; and, although I had no hand, directly or indirectly, in the law which has furnished a pretext for the late dangerous insurrections, I shall ever be of opinion that they, in common with the rest of his Majesty's subjects, should be allowed every possible indulgence consistent with the safety of the empire.

"Upon the whole, my Lords, while I deeply lament the cause which rendered it indispensably necessary to call out the military, and to order them to act in the suppression of the late disturbances, I am clearly of opinion that no steps have been taken for that purpose which were not strictly legal, as well as fully justifiable in point of policy. Certainly, the civil power, whether through native imbecility [a smile], through neglect, or the very formidable force they would have had to contend with, were unequal to the task of putting an end to the insurrection. When the rabble had augmented their numbers by breaking open the prisons and setting the felons at liberty, they had become too formidable to be opposed only by the staff of a constable. If the military had not acted at last, none of your Lordships can hesitate to agree with me that the conflagrations would have spread over the whole capital; and, in a few hours, it would have been a heap of rubbish. The King's extraordinary prerogative to proclaim martial law (whatever that may be) is clearly out of the question. His Majesty, and those who have advised him (I repeat it), have acted in strict conformity to the common law. The military have been called in—and very wisely called in—not as *soldiers*, but as *citizens*. No matter whether their coats be red or brown, they were employed, not to subvert, but to preserve, the laws and constitution which we all prize so highly."

Lord Mansfield sat down in the midst of a reverential silence more flattering to him than the loudest

CHAP. cheers, and the address was immediately carried *nemine*
XXXVIII. *dissentiente*.¹

Bishop Newton, who was present, says, "It was really wonderful, after such a shock as he had received, that he could so soon recollect himself, and so far summon up his faculties as to make one of the finest speeches ever heard in parliament, to justify the legality of the late proceedings on the part of the Government, to demonstrate that no royal prerogative had been exerted, no martial law had been exercised, nothing had been done but what every man, civil or military, had a right to do in the like cases."²

Feb. 3,
1781.
He pre-
sides at the
trial of
Lord
George
Gordon.

Lord Mansfield was soon after placed in a very delicate situation, which required both caution and firmness; he had to preside in the Court of King's Bench at the trial of Lord George Gordon, who stood charged with high treason. It was a high compliment to the known impartiality of English judges, that neither the prisoner himself, nor his counsel nor his friends, were at all alarmed at his fate being placed in the hands of one who had suffered so deeply from the consequences of the acts to be investigated, and who had already pronounced a strong opinion upon the character of those acts. During the whole proceeding, Lord Mansfield showed himself free from the slightest tinge of resentment or prejudice; but, at the same time, he made no parade of generosity of feeling.

There could be no doubt that the acts of the insurgents, during the last days of the riots, did amount to high treason; but the grand question was, how far the prisoner was to be considered privy to them,—for although he had headed the procession to present the petition, and had then been guilty of great intemperance of language by which the mob were excited to

1. "No one dissenting." 21 Parl. Hist. 688-698.

2. Bishop Newton's Memoirs.



LORD ERSKINE.

violence, he had afterwards attempted to control them, and had actually offered to assist the sheriffs in restoring tranquillity. CHAP.
XXXVIII.

Luckily for him, he was defended by an advocate who on this occasion first gave full proof of those wonderful powers which afterwards rendered his name so illustrious. It had been said that Lord Mansfield resembled Cicero in having had his house burnt down by the "modern Clodius." Thus Erskine¹ turned to the advantage of his client an incident which seemed so perilous :

"Can any man living believe that Lord George Gordon could possibly have excited the mob to destroy the house of that great and venerable magistrate, who has presided so long

Erskine's
allusion to
the burn-
ing of Lord
Mansfield's
house.

1. Thomas Erskine, Baron, a lawyer and distinguished orator, the youngest son of David, Earl of Buchan, was born about the year 1748. He belonged to a family of which some members were remarkable for their genius, others for their folly, and he seemed in himself to be a union of these qualities. He studied at the High School of Edinburgh and the University of St. Andrew's, entering successively the navy and army before, from some influence not explained, he began to study law. In his earlier years he acquired a meteoric reputation as a brilliant and fascinating master of convivial conversation. He was called to the bar in 1778. One of his earliest cases involved an exposure in that fertile field of political abuses the admiralty, when it was shown that landsmen were rated to seamen's pensions for electioneering purposes. He at once rushed into full practice, and was employed in every case where a brilliant denunciatory oratory—of which he was an unrivalled master—was desired. In 1783 he entered the House of Commons in Fox's interest, but the florid style of his oratory—so captivating to a jury or on the hustings—failed to please that fastidious audience. He was counsel in many historical cases, and performed heroically that duty of the advocate which prompts him to shrink from nothing which, however much it may compromise his own taste, interest, or safety, appears likely to benefit the cause intrusted to him. His eminence as an advocate made it necessary that he should be appointed Lord Chancellor in the short accession in 1806 of the Fox and Grenville ministry. The prudence of the selection was much doubted ; and it was not fortunate for its object, since he had accumulated no wealth to support his position as a peer. The strange eccentricities of his latter years, entering deeply into his domestic affairs, and making them matter of unpleasant notoriety, would have rendered his claims embarrassing had he seen his friends again in power. He died on November 17, 1823.—*Cycl. Univ. Biog.*

CHAP.
XXXVIII.

in this high tribunal that the oldest of us do not remember him with any other impression than the awful form and figure of justice,—a magistrate who had always been the friend of the Protestant Dissenters against the ill-timed jealousies of the Establishment,—his countryman too,—and, without adverting to the partiality, not unjustly, imputed to men of that country, a man of whom any country might be proud? No, gentlemen, it is not credible that a man of noble birth and liberal education (unless agitated by the most implacable personal resentment, which is not imputed to the prisoner) could possibly consent to this burning of the house of Lord Mansfield.”

Lord
Mansfield's
exposition
of the law
of high
treason.

The Chief Justice again laid down the doctrine that an insurrection to redress a general grievance, or to compel the repeal of a law, is a levying of war and high treason, whether the grievance be real or imaginary, whether the law be good or bad; and he fairly left two questions to the jury: 1st, Did the insurgents intend by force to compel the repeal of the statute passed to mitigate the penalties to which Roman Catholics were subject?—and 2dly, Did the evidence clearly prove that Lord George Gordon had participated in this intent by calling such an assemblage to present the petition of the Protestant Association, by meeting them in St. George's Fields, by leading them to the House of Commons, by addressing them when they were in possession of the lobby, by wearing for two days the blue cockade, which was the badge of the insurgents, or by any other part of his conduct? With perfect candor he likewise pointed out the circumstances favorable to the prisoner; and he advised the jury, if they thought the scale hung doubtful, to lean to the side of mercy.

Lord
George
Gordon is
acquitted.

It is well known that Lord George Gordon was acquitted; and certainly to have convicted him upon acts so indirectly tending to a levying of war, or compassing the King's death, would have been establishing a very dangerous precedent of *constructive treason*.¹

1. 21 St. Tr. 485-652.



LORD CORNWALLIS.

CHAPTER XXXIX.

CONTINUATION OF THE LIFE OF LORD MANSFIELD
TILL HE RESIGNED THE OFFICE OF CHIEF JUSTICE.

LORD MANSFIELD continued to perform his judicial duties with unabated energy, and with still increased respect; but henceforth he acted a much less conspicuous part on the political stage. Lord Thurlow was jealous of his influence with the King; there had for some time been a coldness between him and the Ministry, and this was considerably aggravated by his civil sneers at their inaction during the late riots. To opposition he had an innate dislike, which stuck by him all his life; and he differed altogether from the Rockingham and Shelburne Whigs, who were now pressing on parliament pacification with America and economical reform. Therefore, till Lord North's resignation, he seldom attended in the House of Lords; and he only spoke on such dry subjects as the government of the Isle of Man,¹ the expediency of a bill for the discharge of insolvent debtors,² whether government contractors should be allowed to sit in the House of Commons,³ and whether the corrupt electors of the borough of Cricklade ought to be disfranchised.⁴ In the debates arising out of the surrender of Lord Cornwallis⁵ to

CHAP.
XXXIX.
A.D. 1781,
—1783.
Lord
Mansfield
takes no
part in
politics
during the
administra-
tions of
Lord
Rocking-
ham and
Lord Shel-
burne.

1. 22 Parl. Hist. 561.

2. Ibid. 1364.

3. Ibid. 628.

4. Ibid. 1383-1388.

5. Charles Cornwallis, first marquis (b. 1738, d. 1805), entered the army at an early age, and served under the Marquis of Granby in 1761. He entered parliament for Eye, and was appointed governor of the Tower in 1770. He served in the American War of Independ-

CHAP.
XXXIX.

General Washington,¹ the commencement of hostilities with France and Spain, and the armed neutrality of the

ence, and won much distinction at the battle of Brandywine and the siege of Charleston. He was appointed to the command of the British forces in South Carolina, and in 1780 won the victory of Camden over Gates, the following year defeating Greene at Guildford. In 1782, blockaded at Yorktown by the American army and the French fleet, he was forced to surrender. A violent controversy took place on his return between Cornwallis and Sir Henry Clinton as to the party deserving of blame for the disaster. In 1786 he went to India as Governor General and commander-in-chief of the Bengal army. His administration lasted from 1786 to 1793, and is remarkable for the Mysore War; the arrangements with Oude, Arcot, and the Nizam; the negotiations with Scindiah and the Mahrattas; the Permanent Settlement; and a series of important judicial and revenue reforms. In 1790 Tippoo's attack on Travancore caused Lord Cornwallis to conclude the Triple Alliance with the Mahrattas and the Nizam, and the campaign began on the Malabar and Coromandel coasts. In 1791 Lord Cornwallis determined to take the command himself, and marched straight to Bangalore, which he captured March 21. Tippoo had hastened back to defend his capital. The Nizam's force and the Mahrattas were wasting their time in sieges in the north. On May 13, 1791, was fought the battle of Arikeri, in which Tippoo was beaten. In March, 1792, the treaty of Seringapatam was signed, ending the war, and leaving Tippoo with reduced territory and prestige. As an administrator Lord Cornwallis devoted himself to the correction of abuses. He increased the salaries of the public servants in order to give them the possibility of acquiring a competence by economy, and made war on all frauds and peculation. On his return to England he was employed in 1794 as a diplomatist in Flanders, and carried on fruitless negotiations with the emperor at Brussels. In 1795 he was appointed Master General of the Ordnance. In 1798 he was appointed Lord Lieutenant of Ireland during the violence of the Irish rebellion. In 1801 he returned to England, and was selected as the British plenipotentiary to negotiate the peace of Amiens. On July 30, 1805, he arrived in India as Governor General, pledged to reverse the policy of Lord Wellesley. His avowed policy was to end the war; to break up the system of subsidiary alliances; and to bribe the minor princes of Hindostan to give up their alliance with us by resigning to them jaghires out of the lands south and west of Delhi. In spite of the remonstrances of Lord Lake he proceeded up the Ganges with the intention of carrying this plan out, but his health failed rapidly. He resigned the government to the senior member of the council, Sir George Barlow, and died at Ghazepore Oct. 5, 1805.—*Dict. of Eng. Hist.*

1. George Washington, an American general, and the first President of the United States, was born Feb. 11, 1732, in Virginia. His family emigrated from Cheshire to that country about 1630. His father, Augustus Washington, possessed considerable landed prop-

Northern Powers, he remained silent. When present in the House, and sitting solitary on a back bench, he showed great dejection of countenance, which was supposed to arise not alone from public disasters, but

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erty. George Washington received his education at home, under a private tutor, after which he became an eminent surveyor. He also became major in the provincial militia, in which capacity he was sent by General Dinwiddie, in 1753, to the French commander on the Ohio, to complain of the inroads that were made, in violation of the treaties between the two crowns. He also, at the same time, negotiated a treaty with the six nations and other Western tribes of Indians, for which he received the thanks of his country. In 1755 he served as colonel under the unfortunate General Braddock, who fell a victim to his own haughtiness and imprudence. On that occasion Washington gave strong proofs of his military courage and skill, particularly in conducting the retreat of the army. He held the command of the Virginia troops till 1758; when he gave in his resignation on account of ill health. He now served his country as a senator, and was elected a member of the assembly for Frederick County and afterwards for that of Fairfax. When the breach between Great Britain and her colonies was widened by mutual animosity beyond all prospect of reconciliation, the eyes of his countrymen were fixed upon Washington; and accordingly, in June, 1775, he took the supreme command of the army of America, at Cambridge, in New England. The incidents of that great revolution it is impossible to relate within the compass of a brief article. The history of Washington from this period is the history of the American War. To his intrepidity, prudence, and moderation the Americans were, in great measure, indebted for that independence which was secured to them by the treaty of peace concluded in 1783. Soon after this event Washington resigned his commission to Congress, and in his address on that occasion the magnanimity of the hero is blended with the wisdom of the philosopher. As a genuine proof of his patriotism he would receive no pay for eight years' service, but defrayed his expenses during the war out of his private purse. He now returned to his seat at Mount Vernon, like Cincinnatus, and set himself to complete those favorite improvements in agriculture which had been suspended. In 1789 he was elected President of the United States, on which he quitted his estate, and was received at Philadelphia with the applause which he had so well merited. His government was marked by that well-tempered prudence which distinguished all his conduct. An insurrection among the people of Alleghany and Washington counties, instigated by the French agent, Genet, was suppressed by the energy and moderation of the President, who, in 1796, effected a commercial treaty with Great Britain. He resigned his office the same year; and in 1798 accepted the command of the army, which he held till his death on Dec. 14, 1799. He was buried at Mount Vernon.—*Cooper's Biog. Dict.*

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XXXIX. partly from the consciousness of his own loss of consequence, and the recollection of the brilliant though anxious nights when, matched against the elder Pitt, he had commanded the applause of listening senates.

On the 1st of January, 1782, he received the following melancholy salutation from the Bishop of Bristol:

"Give me leave, at the coming in of the new year, to address your Lordship with the old wish of *multos et felices*. I am happy to hear from all friends so good an account of your health; and I rejoice in it for the sake of the public as well as your own, yours being a life of the greatest consequence, an ornament and blessing to your country. Mine is but labor and sorrow, and I have often occasion devoutly to wish '*Lord, now lettest thou thy servant depart in peace.*' Never having been strong and healthy, it is no wonder, that, entering into the seventy-ninth year of my age, I bow under a load of growing evils."

Lord Mansfield returned by the messenger a melancholy answer:

"A thousand thanks to you for your most friendly letter. We two are almost left alone. Thank God, I go down the hill without pain except for the public; and, if the Brest fleet and convoy are dispersed and driven back, this year opens propitiously. Lady Mansfield, blessed be God, has had a miraculous recovery from a very sudden and violent illness. Prudence on her account has kept me hitherto in town these holidays. I hope to be able soon to have the pleasure of seeing you, and thanking you personally for your kind remembrance of

"Your most affectionate, &c.,

"MANSFIELD."

March,
1782-
Feb. 1783.

During the successive short administrations of Lord Rockingham and Lord Shelburne he still maintained his neutrality, refusing even to offer any opinion upon the preliminaries of peace by which American independence was acknowledged and important concessions were made to the House of Bourbon. Thurlow remained Chancellor, though often capriciously opposing



CHARLES JAMES FOX.

his colleagues, and his course was so erratic that there was great difficulty either in going along with him or abandoning him. CHAP.
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On the formation of the Coalition Ministry, Lord Mansfield was induced by his old friend Lord North to lend it his countenance, notwithstanding his "friendship" for George III. He declined to reënter the Cabinet, but, the great seal being put into commission, he agreed again to act as Speaker of the House of Lords. During the stormy period which followed, he occasionally left the woolsack and said a few words when he thought he could do a good turn to the Government, while Lord Loughborough stood forth as its regular champion. There being a furious opposition stirred up against the Receipt Tax, now devised for the first time by Mr. Fox¹ and Lord John Caven- Feb. 1783.
He joins
the coalition.

1. Charles James Fox (*b.* 1749, *d.* 1806) was the second son of Henry Fox, afterwards Lord Holland. Educated at Eton and Oxford, he afterwards travelled on the Continent, and while still in Italy he was returned M.P. for Midhurst, as a supporter of Lord North. His success was immediate, and was the more readily assured since he took the side of the majority. His brilliant and reckless support was rewarded by his appointment in Feb., 1770, as a junior Lord of the Admiralty. This position he retained for two years, and then, after attacking Lord North with much warmth on the Church Nullum Tempus Bill, in Feb., 1772, he resigned, and thus felt himself at liberty to oppose the Royal Marriage Act. He was again taken into the ministry as a Lord of the Treasury; but his fiery spirit was too independent to allow him to remain long in any subordinate post. He instituted a mutiny in the government ranks, which resulted in Lord North's defeat. Henceforth, his great social influence and greater debating powers were enlisted on the Whig side. He openly opposed Lord North's ministry, especially in regard to their American policy, and at once became a recognized leader of the Whigs, and a close friend of Burke, whose views he now began to share. In 1779 he made a most violent attack upon Lord Sandwich, the First Lord of the Admiralty, and moved that he might be excluded from the King's councils. He had now come to be the acknowledged leader of the opposition in the House of Commons; and was selected by the Radical electors of Westminster as their champion along with Admiral Rodney. He still continued to attack the ministry with the fiercest invectives, and even threatened Lord North with impeachment. In 1782 Lord Rockingham formed a

CHAP. cabinet, in which Fox was one of the Secretaries of State. With
XXXIX. Lord Rockingham's death in July Fox's share in the government came to an end. He distrusted Shelburne, and would not serve under him. Before a year was passed Shelburne, unable to withstand the strictures with which Fox greeted his peace proposals, resigned ; and Fox became the colleague of Lord North, as Secretary of State, under the nominal lead of the Duke of Portland. An alliance so unnatural could not last long, and the government was defeated on Fox's India Bill, chiefly through the King's influence. After the dismissal of the coalition ministry Pitt came in with a minority to back him ; but Fox did much to ruin the cause of his party by the factious and violent opposition which he offered to all Pitt's measures. Pitt soon became firmly established in his position ; but Fox continued to harass him with attacks at every point. He opposed his India Bill, and tried to make capital out of Pitt's measures for the relief of Ireland. In 1786 he obtained a splendid opportunity of displaying his eloquence and abilities in the prosecution of Warren Hastings ; but in this great trial he seems to have been eclipsed by his illustrious companions. Two years later he warmly espoused the unconstitutional position desired by the Prince of Wales on the question of the Regency Bill, but he was baffled by the patient resolution of Pitt. In 1789 came the news of the destruction of the Bastille. Fox at once hailed with delight what he deemed the uprising of an oppressed people. In 1791 he passed the celebrated Libel Bill. With greatly diminished following, Fox still continued to watch with sympathy and enthusiasm the course of the Revolution in France, and furiously opposed the notion of war with that country. In 1795 he employed his most vehement eloquence in opposing in vain the Sedition and Treason Bills. Seeing that he could effect nothing, Fox retired in 1797 into domestic privacy at St. Anne's Hill. In 1804, on the resignation of Addington, Pitt, well aware of his difficulties, was very anxious to form a cabinet on a broad basis, where faction might be sunk in patriotism. With this object in view he desired the coöperation of Fox ; but the King would not hear of it. On Jan. 26, 1806, Pitt died, and the King at length overcame his prejudices and had recourse to the opposition, out of which a ministry was formed with Lord Grenville as Prime Minister and Fox as Foreign Secretary. Fox now abandoned his passionate longing for peace with France before the necessity of saving Europe ; and in his efforts to achieve this object he was as resolute as Pitt. But Napoleon took advantage of his still strong desire for peace to carry out his own schemes for the conquest of Europe ; and the fatal indecision of the ministry left Prussia unaided to oppose Napoleon's combinations, and to be defeated at Jena. Death, however, came to Fox just in time to save him from witnessing the overthrow of his most cherished hopes. While negotiations were still pending between England, France, and Russia, Fox died, Sept. 13, 1806. To a real passion for liberty, very unusual with eighteenth-century Whigs, Fox added honesty, manliness, and consummate eloquence. His sweet disposition effaced the memory of

dish,¹ various peers came down to the House loaded with petitions against it; but Lord Mansfield not only asserted the rule that no petition against the imposition of a tax can be received, but took occasion to point out the necessity for contributing to the necessities of the public service, and the great danger to be apprehended from the prevalence of delusion and faction on such a subject.²

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While the tempest raged in the Lower House the Upper was comparatively tranquil, and Lord Mansfield had little else to do beyond putting the question nightly upon the adjournment. But at last the famous India Bill was delivered at the bar by Mr. Fox, attended by a numerous band of coalitionists. From the growing unpopularity of the cabal against the just rights of the Crown between those who had recently threatened to bring each other to the block for their political mis-

Fox's
India Bill
in the
House of
Lords.

his private irregularities; his general straightforwardness atoned for occasional factiousness.—*Dict. of Eng. Hist.*

1. The following epigram was told me many years ago by an old lawyer, who pretended that he had made it on this occasion, to celebrate Fox's extravagance and poverty. I know not whether it has before been in print:

“Said Charles, ‘Let us a tax devise
That will not fall on me’;
‘Then, tax RECEIPTS,’ Lord John replies,
‘For those you never see.’”

Lord John Cavendish was son of the fourth Duke of Devonshire. He was a very independent nobleman, and trod evenly in the line of his illustrious ancestors. In the administration under the Marquis of Rockingham, in 1765, he was appointed one of the Lords of the Treasury, and during the American War he constantly opposed Lord North. On the resignation of that nobleman he came into office as Chancellor of the Exchequer, but on the death of the Marquis of Rockingham soon afterwards, and the appointment of the Earl of Shelburne, he and his friends resigned their places. His lordship then became one of the famous coalition, against whose united efforts the new administration could not stand. He, therefore, once more entered into office as Chancellor of the Exchequer, but the ministry were soon dismissed. From that time he continued in opposition. Died Dec. 19, 1796.—*Cooper's Biog. Dict.*

2. 23 Parl. Hist. 1029.

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deeds, a resolution had been taken, with the concurrence of the King, to reject the measure and to get rid of its framers at the same time ; and all men saw that a death-struggle was at hand. The opposition to the bill was manifested with violence before it had been read a first time ; but the policy of its opponents was—not to come to a decision upon it till it had been further damaged in public opinion and the cry of “ No Coalition ” should have gathered still more strength. Therefore, after much abuse, it was allowed to be read a first and second time, and the petitioners against it were then to be heard with their evidence at the bar. This policy proving successful, many useless witnesses were examined, and their examinations were most tediously protracted. Lord Mansfield presided on the woolsack, and often tried, by interposing, to check irrelevancy and repetition ; and he soon found that there was a decided majority of the Peers ready to vote for whatever Lord Thurlow, now the avowed leader of the Opposition, might propose.

Dec. 15.
1783

At last Lord Loughborough, after a bitter invective against the counsel of the East India Company for the manner in which, “ in obedience to their instructions,” they had been wasting the time of the House, rather imprudently moved, “ that they be restrained from going into proofs of the Carnatic having been evacuated, and peace being established there, as it was a fact universally admitted.”

Thurlow saw the advantage his party would have in taking a division on this question, and made a violent speech against those who wished to stifle inquiry and were resolved at once to invade the rights of private property and the prerogatives of the Crown.

Lord Mansfield left the woolsack, and in a calm, judicial, meditating tone, expressed a hope that the House would come to some understanding as to the



WILLIAM PITT, THE YOUNGER.

manner in which the inquiry should be conducted, CHAP. XXXIX.
without putting the question which had been moved :

"He was inclined," he said, "to think that a great deal of the evidence which had already been produced might have been spared ; but where a bill was depending which materially affected the property of individuals, it was usual for the House to allow them every indulgence possible, and to use as much delicacy in passing such a bill as the nature of the case would admit. The measure, though perhaps necessary and expedient for the public good, certainly was severe upon the petitioners, by depriving them of the management of their own concerns ; and for this reason it was that their Lordships hitherto had shown such exemplary patience while they might have complained that their time was wasted. It was impossible to say that the present state of the Carnatic might not be material for their consideration, and various opinions might be entertained as to the mode in which that province had been and ought to be governed. He owned that the bill was of the highest importance, and that their Lordships should come to a decision upon it with all convenient despatch ; but still he trusted that his noble and learned friend would waive his motion, and that the House would permit the counsel to proceed." *Lord Loughborough* : "My Lords, I have no difficulty in complying with a request coming from a quarter which I so much respect. Therefore, with the permission of your Lordships, I withdraw my motion." *Lord Mansfield* : "Call in the counsel for the petitioners. Gentlemen, you will proceed with your evidence, the House confiding in your professional honor that you will only offer that which you believe to be material for our information."¹

When it was judged that the public mind was in a Mr. Pitt
Prime
Minister. fit state for receiving the dismissal of the Ministers, who were still supported by a large majority of the House of Commons, the evidence was closed, the bill was rejected, and Mr. Pitt² was declared Prime Minister.

1. 24 Parl. Hist. 146-150.

2. William Pitt, the second son of the great Lord Chatham, was born at Hayes in Kent on the 28th of May in the year 1759. He was educated at home under private tuition until at the age of four-

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The great seal being taken out of commission and

teen he entered at Cambridge. His biographers are profuse in their testimonies to his precocious capacity and readiness in acquiring knowledge. He was indeed saturated with tuition of all kinds, and taught from his earliest youth by his haughty father to consider himself the hope of the country. He thus acquired at the age when young men are just ridding themselves of boyish shyness an austere self-possession, which imparted to everything he did an air of wisdom and authority. He never knew the nature of diffidence, and the easy assurance with which he took whatever duty or office presented itself is supposed, not without good reason, to have deceived the world as to the extent of his capacity. In January, 1781, he was returned to parliament for Appleby, and at once threw himself into the business of the session with the confidence of an old debater. He boldly adopted the projects of reform, then rising into shape in Britain side by side with the discontents in France, and in 1782 brought on his motion for a reform in the representation of the people. On the accession of Lord Shelburne's administration in July he was made Chancellor of the Exchequer, and this invitation to retire from the party who were deemed utopian theorists showed that a well-founded reliance was placed in his ambition overcoming his reforming propensities. It was in the December of 1783 that King George dismissed the coalition ministry, and, placing young Pitt at the head of the cabinet, conducted with his able championship that battle in which the crown defeated the political aristocracy. Among the statesmen of the day, Dundas, afterwards his right-hand man, had the sagacity to see beforehand that he would be victorious, and to sacrifice other prospects for a participation in his fortune. Once established in power, he ruled through seventeen of the most eventful years of European history. When his reign began he had not quite abandoned his old reforming views, and, being well versed in the newly promulgated philosophy of Adam Smith, he was partial to the principle of free trade. But the French Revolution drove him back from all progressive projects, and the frightened country submitted to a sort of ministerial and parliamentary despotism. The great conflict in which the young minister of a constitutional country measured his strength with the young military despot of France is matter of history familiar to all. That Pitt, although perhaps his powers have been somewhat exaggerated by panegyrists, showed great resources cannot be denied. His readiness in debate and promptness in comprehending business have seldom been equalled. What chiefly surprises people of the present day in the history of his career is the vast amount of dissipation, and especially of drinking, with which his great labors were diversified; but perhaps his frailties have, like his abilities, been exaggerated. It was said of him that he never was truly young, that he never had the freshness, naturalness, and openness of youth; it is certain that he grew old before his time, and he died of a broken and exhausted constitution on the 23d of January, 1806.—*Cycl. Univ. Biog.*

restored to Lord Thurlow, Lord Mansfield surrendered the woolsack to him, having occupied it on this occasion nearly a twelvemonth. CHAP. XXXIX. Dec. 23, 1783.

He had but an indifferent opinion of the young gentleman who, at the age of twenty-four, was now trusted with supreme power, notwithstanding the accounts he received of his extraordinary eloquence. The prejudice he entertained against the name of Pitt was greatly strengthened by the part which the youthful orator had taken in denouncing ministerial corruption and in advocating parliamentary reform. On the other side, there were rankling recollections of the long hostility which had prevailed during the life of the sire, and the indifference manifested at his death, which the son himself had witnessed.

Lord Mansfield, like all the world, believed at first that the new administration must be short-lived, and he was willing to contribute his aid to overthrow it. When a resolution was moved in the House of Lords against the conduct of the majority of the House of Commons in obstructing the exercise of the King's right to choose his ministers, Lord Mansfield opposed it in a speech which is memorable as the last he ever delivered in parliament: Feb. 4, 1784.

"Every man," said he, "who is called upon to consider a great measure ought to begin at the end; in other words, before he adopts it he ought to examine the consequences that will probably flow from it. Thus a Roman prætor, whenever a new proposition was made to him, used always to ask *cui bono?*—and I may with propriety add *cui malo?* for the evils to ensue are to be regarded as well as the benefits expected from it. Looking at the resolution before us, I behold it with trembling. I have never risen to speak to a question with such anxiety in my life. I scarcely know how to express myself. It had pleased his Majesty to change his ministers under circumstances which caused violent conflicts in parliament. Now it is agreed on all hands that an abatement of these conflicts is Lord Mansfield's last speech in parliament.

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desirable ; that in the depressed state of the nation union is the one thing needful. I hope God Almighty in His goodness will instil concord into the hearts of the inhabitants of this ill-fated country, and thus effect our salvation from almost certain perdition. Will the present resolution, if passed, tend to such a consummation ? We are told that there is no wish to disturb the harmony between the two Houses. Then why pass a resolution which must produce a quarrel between them—to the entire obstruction of public business ? What is the remedy ? A dissolution of parliament ! But a dissolution of parliament in the present situation of affairs is utterly impracticable. We have no time to spare ; we are even now at the last hour. The ship sinks while we are deliberating on what course we should steer. I speak merely from a sense of the extreme peril to which we are exposed, and not from any view to this or that administration. There are in the present administration able and respectable men, but I wish to God that it had more strength. At this moment the strongest administration is the best, and any administration competent to deliver us from the appalling dangers with which we are environed shall have my support. The proposed resolution declares an abstract proposition, which no one can deny, ‘that neither House of Parliament has power to suspend or alter the law of the land.’ What necessity can there be for such a declaration ? and what good can arise from it ? If the Commons have made any attempt of this nature, their act is a nullity, and no one need respect it. But do you not needlessly insult them by telling them that they have done so ; and may it not be dreaded that, following your example, and forgetting the public welfare, they may seek blindly to gratify the factious inclination for mischief which you impute to them ? Before you render a dissolution of parliament indispensable, think for a moment of the evils which must ensue. Are you prepared to disband the army, to lay up the navy, to paralyze all the operations of government, and to expose yourselves to the machinations of rival states which have so recently conspired your destruction ? I own I tremble at the precipice on which we stand. If any persons have been guilty of a crime against the constitution, let them be impeached and legally tried. No injury can arise from the exertion of constitutional means of enforcing the law ; but do not wantonly pass a resolution which can neither pre-

vent nor punish crime, which can only be meant as an insult to the representatives of the people, and which may prove the signal for universal confusion in the country."

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The resolution, however, was carried by a majority of 47; and was followed by an address to his Majesty, engaging to support him in the exercise of his prerogative of choosing his ministers.¹ Upon this occasion the House of Lords was the rallying point for public opinion, and an instance was afforded of the necessity for two deliberative assemblies in framing a free constitution.

In the course of the ensuing month a dissolution of Parliament did take place, when the coalitionists were scattered to the winds. A House of Commons was returned which made Mr. Pitt the most powerful minister who held office during the long reign of George III., and till the breaking out of the French Revolution he governed the country with consummate prudence and signal success.

Lord Mansfield's political career must here be considered as closed. After the meeting of the new Parliament he took his seat in the House of Lords, and occasionally attended to the judicial business which came before it, but he never again opened his mouth in debate. I hope he was pleased to find that his predictions respecting the ruin of the empire were not verified, and that, as his bodily vigor declined, he was not distracted by party squabbles from the discharge of his forensic duties.

Close of
Lord
Mansfield's
political
career.

He continued to preside in the Court of King's Bench several years longer, as much admired as ever for the intellectual qualities he displayed, and, if possible, more revered from the venerable age he had attained.

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Dean of
St. Asaph's
Case :
rights of
juries in
cases of
libel.

The great question was revived respecting the rights of juries on trials for libel. In the famous case of the DEAN OF ST. ASAPH,¹ who was prosecuted for

1. William Davies Shipley (1745-1826), dean of St. Asaph, born Oct. 5, 1745, at Midgeham, Berkshire, was son of Dr. Jonathan Shipley bishop of St. Asaph, and nephew of William Shipley. He was educated at Westminster and Winchester successively, and matriculated Dec. 21, 1763, at Christ Church, Oxford, where he graduated B.A. in 1769 and M.A. in 1771. Though liberal-minded churchmen, both father and son were great pluralists, and the former immediately after being made bishop of St. Asaph appointed his son vicar of Ysgeifnog March 19, 1770. He was also made vicar of Wrexham Feb. 6, 1771, sinecure rector of Llangwm April 11, 1772, which he exchanged first for Corwen (1774-82) and subsequently for Llanarmon yn Ial (1782-1826), having meanwhile been also made chancellor of the diocese in 1773 and dean of St. Asaph May 27, 1774, all of which preferments, subject to the two exchanges mentioned, he held until his death. While he was dean the fabric of the cathedral at St. Asaph was repaired, the choir rebuilt (1780), and a reredos erected (1810). Shipley appears to have early imbibed his father's principles of political freedom. In 1782 William (afterwards Sir William) Jones published a political tract of pronouncedly liberal tone entitled "The Principles of Government, in a Dialogue between a Gentleman and a Farmer." Shipley, whose eldest sister had long been engaged to Jones and was married to him in April, 1783, brought it to the notice of a county committee for Flint (a branch of one of the reforming associations of the day), who made it the subject of a vote of approbation. He also gave instructions for having it translated into Welsh (though he had not yet read it himself), but on hearing that its contents might be misinterpreted he resolved to proceed no further in the business. The Tory party in the county, led by the sheriff, the Hon. Thomas Fitzmaurice, violently attacked him for his abandoned project at a county meeting on Jan. 7, 1783, whereupon Shipley caused a few copies of the tract to be reprinted at Wrexham, adding a brief preface in his own defence. At the instigation of the sheriff—the treasury having declined to prosecute—Shipley was indicted at the Wrexham great sessions in April, 1783, for publishing a seditious libel, and the case came on for hearing on Sept. 1 before Lloyd Kenyon and Daines Barrington. In March, 1784, it was removed by certiorari to the King's Bench, and then remitted for trial at Shrewsbury, where it was finally heard before Mr. Justice Buller on Aug. 6, 1784. Buller directed that the jury was merely to find the publication and the truth of the innuendoes as laid; whether the words constituted a libel or not was for the court. Erskine, who had appeared for the dean from the first, vigorously resisted this view, and the verdict given was "Guilty of publishing, but whether a libel or not the jury do not find." In Michaelmas term Erskine, in an eloquent speech, argued for a

publishing a very harmless dialogue written by Sir William Jones, Mr. Justice Buller having told the jury

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new trial, which Lord Mansfield refused. Having down to this point fought the case chiefly on the lines of vindicating the rights of juries, Erskine now moved the court for arrest of judgment on the ground that no part of the publication was really criminal, a view which the court accepted, and the dean was at length discharged from the prosecution, which had lasted nearly two years. The news was received with great rejoicings, and bonfires were lit and houses illuminated as the dean proceeded first on a visit to his father at Twyford, near Winchester, and subsequently through Shrewsbury, Wrexham, and Ruthin to his residence near St. Asaph. The interest which the trial evoked, coupled with the power of Erskine's eloquence, was the means of somewhat tardily inducing the House of Commons to transfer the decision of what is libellous from judge to jury by Fox's Libel Act of 1792 (32 Geo. III. c. 60), a measure which completed the freedom of the press in this country.

Shipley's actions were, however, closely watched by the Tory party in Flintshire for many years afterwards, and a vague proposal to recommence proceedings against him is mentioned in November, 1796, in a letter addressed to Lord Kenyon by Thomas Pennant, who communicates some spiteful stories of the dean, charging him not only with profligacy, impudence, and incorrigibility, but also with breaches of the peace (Kenyon MSS., quoted in *Bye-gones* for 1895-96, pp. 438, 488). The dean is said (*Gent. Mag.* vol. xcvi. pt. xi. p. 642) to have written a preface to the edition of his father's works published in 1792, when he took occasion to vindicate the bishop's espousal of the cause of the American colonists in their conflict with the British government, but this preface does not appear in the ordinary copies of the work. He is also said to have assisted his sister in collecting the letters and other literary remains of Sir William Jones (Nichols, "Literary Illustrations," iii. 155), which were published in 1799. Shipley died at his residence, Bodrhyddan, near St. Asaph, on May 7, 1826. He was buried at Rhuddlan, where there is a tablet to his memory; and a life-size statue of him by Ternouth, provided, by public subscription in the diocese, at the cost of 600*l.*, was also placed in St. Asaph's Cathedral. He married, April 28, 1777, Penelope Yonge, elder daughter and coheiress of Ellis Yonge of Byrn Iorcyn, near Wrexham, and next of kin of Sir John Conway, last baronet of Bodrhyddan, whose maternal great-granddaughter she was (Burke, "Extinct Baronetage and Landed Gentry," s. v. "Conway"). She died on Nov. 5, 1789, leaving issue five sons and three daughters, the eldest son being Lieutenant Colonel William Shipley (1779-1820), Whig M.P. for Flint boroughs from 1807 to 1812 (Taylor, "Historic Notices of Flint," pp. 174-176; Williams, "Parl. Hist. of Wales," p. 93), whose son, on the death of the dean in 1826, assumed the name of Conway, which is still borne by his descendants, the present owners of Bodrhyddan. The eldest daughter, Penelope, was married to Dr.

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that they were not entitled to form any opinion upon the character of the paper charged as libellous, Erskine, his counsel, moved for a new trial, on the ground of misdirection, and, in support of his motion, delivered the finest juridical argument to be found in the annals of Westminster Hall. However, as he himself afterwards confessed, this effort was without any hope of success, and was only intended to draw the attention of the public to the subject, with a view to obtain redress by legislation.¹ Lord Mansfield thus delivered judgment :

“The objection so confidently relied upon might have been made upon every trial for a libel since the Revolution, now near one hundred years ago. In every subsequent reign there have been many such trials, arising out of prosecutions both of a private and public nature ; and several of these have been defended with all the acrimony of party animosity, and a spirit ready to admit nothing and to contest everything. During all this time, as far as can be traced, the direction of every judge has been substantially the same as that of my brother Buller ; and, till the reign of George III., no complaint was made of it by a motion to the Court. The counsel for the Crown, to remove the prejudices of a jury and to satisfy the bystanders, have expatiated upon the enormity of the libels ; judges, with the same view, have sometimes done the same thing : both have done it wisely with another view—to obviate captivating harangues tending to show that the jury can and ought to find that the paper is no libel. It is difficult to cite cases ; the trials are not printed, and nobody takes notes of a direction which is not disputed. We must in all cases of tradition trace backwards, and presume from usage which is remembered that the precedent usage was the same. The *King v. Clarke* was tried before Lord Raymond, and there he expressly lays it down ‘the

Pelham Warren ; the second, Anna Maria, to Colonel Charles A. Dashwood ; and the third, Amelia, was married in April, 1809, to Reginald Heber. It was while on a visit to his father-in-law that Heber composed, at the old vicarage, Wrexham, his popular hymn “From Greenland’s Icy Mountains.”—*Nat. Biog. Dict.*

1. “Lives of the Chancellors,” vi. 463 n.

fact of printing and publishing only is in issue.' The CRAFTSMAN was a celebrated party paper, written, in opposition to the ministry of Sir Robert Walpole, by many men of high rank and great talents. The Government at last would bear its licentiousness no longer, and the famous *Hague letter* was selected as a fit subject of prosecution.¹ I was present at the trial. There was a great concourse of people, and many distinguished political characters were present to countenance the defendant. Mr. Fazakerley² and Mr. Bootle (afterwards Sir

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1. *Rex v. Francklyn*, 17 St. Tr. 625., A.D. 1731.

2. Nicholas Fazakerley (*d.* 1767), lawyer and politician, son of Henry Fazakerley, came of an old Lancashire family which long resided at Fazakerley, a township near Liverpool (Baines, "Lancashire," ed. Wharton and Harland, 11, 291). His own house was at Prescott, Lancashire. On Feb. 9, 1714, he was admitted of the Inner Temple from the Middle Temple, but was called to the bar from the latter society (Inner Temple Admission Register). At first he practised chiefly in chambers as an equity counsel, but as his practice grew he began to appear with increasing frequency, not only in the equity court, but in the courts of common law, mostly, however, to argue questions connected with conveyancing and the transfer of real property. Occasionally his consummate knowledge of constitutional law led him to be retained in state trials. Among the most interesting of such cases was the trial of Richard Francklin a Fleet Street bookseller, on Dec. 3, 1731, for publishing in the *Craftsman* of Jan. 2 previously the famous Hague letter, said to have been written by Lord Bolingbroke (Howell, "State Trials," xvii. 626-7). Fazakerley was retained with Mr. (afterwards Sir Thomas) Bootle for the defence and, in the words of Lord Mansfield, "started every objection and labored every point as if the fate of the empire had been at stake" (Campbell, *LIVES OF THE CHIEF JUSTICES*, ii. 541). In January, 1732, he was chosen to succeed the Right Hon. Daniel Pulteney as M.P. for Preston. He evinced his gratitude for the honor conferred upon him by making, in the following December, a niggardly present of 20*l.* to the mayor of Preston to be applied in some charitable manner amongst the poor of the town. He himself recommended its application to the binding of poor freemen's sons to be apprentices. He retained his seat for life, being returned at the head of the poll in the contested election of 1741 (Smith, "Parliaments of England," i. 186). In August, 1742, Fazakerley was appointed recorder of Preston, which office he also held until his death. His politics, however, prevented his attaining the honors of his profession; he never received even a silk gown. Fazakerley entered parliament as an adherent of the Tory party; he was a Jacobite of the cautious type. He was listened to with attention, and by a section of his party came to be regarded as a leader. In a debate on the convention with Spain, March 9, 1739, whereby peace was secured on payment by the Spanish government

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Thomas Bootle) were counsel for the defendant. They started every objection and labored every point as if the fate of the empire had been at stake. When the Judge overruled them, he usually said, 'If I am wrong, you know where to apply.' The Judge was my Lord Raymond, who had been eminent at the bar in the reign of Queen Anne, had been Solicitor and Attorney General in the reign of George I., and was intimately connected with Sir Edward Northey,¹ who had been engaged

of a compensation to English traders, he declared that if Sir Robert Walpole "were determined to carry it by a majority he would never again appear in the House till he perceived a change of measures" (Cobbett, "Parliamentary Hist." x. 1318). He also distinguished himself in the debates in May, 1751, on Lord Hardwicke's Regency Bill, especially by his resolute opposition to the marriage clause (*ibid.* xiv. 1013-17). There is a story that Walpole prevailed on Lord Hardwicke, then Sir Philip Yorke, to quit the chief justiceship for the chancellorship by the declaration: "If by one o'clock you do not accept my offer, Fazakerley by two becomes lord keeper of the great seal, and one of the stanchest Whigs in all England" (Walpole, "Memoirs of George II." i. 138 n.). Another of his speeches which attracted considerable attention was that delivered against the Jews' Naturalization Bill, May 7, 1753 (Cobbett, xiv. 1402-12). Fazakerley died at his house in Grosvenor Street, London, in February, 1767 (*Scots Mag.* xxix. 110; *London Mag.* xxxvi. 125-6, 147; Probate Act Book, P. C. C., 1767). His will was proved at London on March 16 following (registered in P. C. C. 95, Legard). He married, Oct. 10, 1723, Ann Lutwyche, who survived him (Malcolm, "Londinium Redivivum," iv. 294). He had a son and a daughter. The son died June 30, 1737 (*Gent. Mag.* vii. 451). Elizabeth, the daughter, was married Dec. 23, 1744, "with 16,000*l.* down," to Granville, eldest surviving son of John, first Earl Gower, and died May 19, 1745 (*ibid.* xv. 51; Collins, "Peerage," ed. Brydges, ii. 450). A portrait of Fazakerley by Anthony Devis now hangs in the reading-room of Dr. Shepherd's Library at Preston. His clerk, Robert Boulton, left him at his death in 1760 the sum of 50*l.* with which to present his picture "drawn at full length with a handsome frame to the corporation of Preston, in order to be set up in the Town Hall of the said borough as a memorandum that the said Corporation had once an honest man to represent them in parliament" (will of Robert Boulton, registered in P. C. C. 90, Lynch; Dobson, "Hist. of Parliamentary Representation of Preston," 2d edit., pp. 31-3).—*Dict. Nat. Biog.*

1. Sir Edward Northey (1652-1723), Attorney General, born in 1652, was the son of William Northey of London, Esq. The latter was probably the son of Thomas Northey who matriculated at Oxford (Wadham College) in June, 1634, and was afterwards a barrister of the Middle Temple. Edward was educated at St. Paul's School, under Samuel Cromleholme, and at Queen's College, Oxford, where he matriculated Dec. 4, 1668, aged 16. His name does not appear in

in many state trials before the Revolution. He must, therefore, have been well acquainted with the ancient practice. Yet, when he comes to sum up, he says, 'There are three things for consideration : 1. the fact of publication ; 2. the meaning of particular words (these two are for the jury) ; 3. the question of law or criminality, and that is upon the record for the Court.' Mr. Fazakerley and Mr. Bootle were, as we all know, able lawyers, and were allied in party to the writers of the *Craftsman*. Yet, after a verdict of *Guilty*, they never complained to the Court, and it never entered their heads that the direction was not according to law. I recollect one case afterwards in which, to the great mortification of Sir Philip Yorke, then Attorney General, the *Craftsman* was acquitted, and I recollect it from a famous witty and ingenious ballad that was composed on the occasion by Mr. Pulteney. Though it be a ballad, I will cite a stanza from it to show you the opinion upon this subject of the able men in opposition, and the leaders of the popular party. in those days. They had not an idea that the jury had a right to determine upon a question of law, and they rested the verdict on another and better ground :

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' For Sir Philip well knows
That his *innuendoes*
Will serve him no longer
In verse or in prose ;
For twelve honest men have decided the cause,
Who are judges of fact, though not judges of laws.'

the register of graduates. In 1674 he was called to the bar at the Middle Temple, and in 1697 was made a bencher of that society. In June, 1701, on the promotion of Sir Thomas Trevor to be Lord Chief Justice of the Common Pleas, Northey was made Attorney General. This office he held till 1707, and again from 1710 till March 1718, when he resigned with a pension of 1500*l.* a year. On June 1, 1702, he was knighted. He was engaged in many state trials, notably in that of David Lindsay for high treason, 1704, and in that of John Tutchin, so cruel in its sequel, for libel. Among his extant "opinions" on cases submitted to him is one referring to an appointment held by Addison (Egerton MS. 1971. f. 19). In December, 1710, he was elected M.P. for Tiverton, and in September, 1715, he was appointed a commissioner under the act for building fifty new churches in and about London and Westminster. He died on Aug. 16, 1723. In 1687 (license dated Dec. 1) he married Anne Jolliffe of St. Martin Outwich in the city of London. By this lady, who died on Aug. 14 1743, he had a daughter, Anne, wife of Sir Thomas Raymond, baron of the exchequer.—*Dict. of Nat. Biog.*

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"Here you have the admission of a whole party that the jury had no power beyond determining on the '*innuendoes*,' or the meaning ascribed by the information to particular words; and they never made a pretence of any other power, except when talking to the jury themselves." After stating what his own practice had been since he became Chief Justice, he continued: "The constitution trusts that, under the direction of a judge, the jury will not usurp a jurisdiction which is not in their province. They do not know, and are not presumed to know, the law. They do not understand the language in which it is conceived, or the meaning of the terms. They have no rule to go by but their affections and wishes. It is said that if a man gives a right sentence upon hearing one side only, he is a wicked judge, because he is right by chance only, and has neglected taking the proper method to be informed;¹ so the jury who usurp the judicature of law, though they happen to be right, are themselves wrong because they are right by chance only, and have not taken the constitutional way of deciding the question. It is the duty of the judge to tell the jury how to do right though they have it *in their power* to do wrong, which is a matter entirely between God and their own consciences. To be free is to live under a government by law. The liberty of the press consists in printing without any previous license, subject to the legal consequences. The licentiousness of the press is Pandora's box, the source of every evil. Miserable is the condition of individuals, dangerous is the condition of the state, if there is no certain law; or, which is the same thing, no certain administration of law, by which individuals may be protected, and the state made secure. Jealousy of leaving the law to the Court, as in other cases, so in the case of libels, is now in the present state of things puerile rant and declamation. The judges are totally independent of the ministers that may happen to be in power, and of the King himself. The temptation to be dreaded is rather the popularity of the day. But I agree with the observation cited by one of the counsel for the prosecution from Mr. Justice Foster, 'that a popular judge is an odious and pernicious character.' The judgment of the Court is not final, and, in the last resort, it may be reviewed in the House of Lords. In

1. "Qui statuit rectum, parte inauditâ alterâ,
Licet æquum statuerit, haud æquus est."

opposition to this, what is contended for? that the law shall be in every particular case what any twelve men who shall happen to be the jury shall be inclined to think,—liable to no review and subject to no control,—under all the prejudices of the prevailing popular cry, and under all the bias of interest in this metropolis, where thousands are concerned more or less in the manufacture of pamphlets, newspapers, and paragraphs. Under such an administration of law no man could tell, no counsel could advise, whether a paper is or is not punishable. I am glad that I am not bound to subscribe to such an absurdity, such a solecism in politics. Agreeable to the uniform judicial practice since the Revolution, warranted by the fundamental principles of the constitution, according to the maxims on which trial by jury is constituted, upon reason and fitness as well as authority, we are all of opinion that the direction at the trial was proper, and that this rule must be discharged.”¹

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Upon a question so important in our constitutional history this exposition of the sentiments of Lord Mansfield must ever be interesting, although it be chargeable with some inaccuracy of statement, as well as fallaciousness of reasoning; and he lived to see the doctrine which he considered so clearly and satisfactorily settled upset by a declaratory act of parliament. He was quite wrong in his recollection of Pulteney’s ballad on the acquittal of the *Craftsman*, which runs thus:

“ For twelve honest men have determined the cause,
WHO ARE JUDGES ALIKE OF THE FACTS AND THE LAWS.”²

Although Lord Raymond and subsequent judges had ruled in the manner represented, the practice could not be distinctly carried farther back than his time; and, instead of being acquiesced in, the battle was renewed on every state prosecution for a libel. Lord Camden had often solemnly protested against Lord Mansfield’s doctrine, and in the time of JUNIUS

1. 21 St. Tr. 847–1046.

2. See *Lives of the Chancellors*, vol. v. pp. 25, 103, 136, 141, 176, 177, 206, 287.

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it had been reprobated in both Houses of Parliament. Indeed, it rests upon the transparent fallacy, that whether a paper amounts to a libel or not, is invariably a pure question of law. But all the judges supported Lord Mansfield's doctrine when consulted in the House of Lords on the introduction of Fox's Libel Bill, and there can be no doubt of the sincerity and honesty with which he laid it down and adhered to it. Erskine afterwards, in the defence of Paine,¹ intimated how clearly the law was then supposed to be settled against him: "I ventured to maintain this very right of a jury over the question of libel, before a noble and reverend

1. Thomas Paine, born at Thetford, in Norfolk, on the 29th of January, 1737. He was of humble origin, and conducted in early life his father's business of a stay-maker. He was destined afterwards to a vast notoriety, which might have proved an enduring reputation if he had well applied the great talents with which he was endowed. His history may be cited as an unhappy illustration of the defectiveness of any social system which does not supply a legitimate place for the ambitious longings of men of humble rank by supplying them with education and the means of advancement. In other conditions Paine might have been a great popular preacher, a distinguished statesman, or an eminent lawyer. He went to America at the outbreak of the war of independence, and there enlisted himself against the claims and interests of his own country by writing the pamphlet called "Common Sense." He led a restless life, passing from one employment to another. It is generally said that he was repeatedly dismissed for misconduct. But the prejudices against his writings were so deep that all statements about his personal conduct should be taken with caution. In 1790 he published the first part of his "Rights of Man," a controversial attack on Burke's views on the French Revolution. The second part, which was a mere palpable attack on the constitution and government of Britain, procured a verdict for libel against its author in the King's Bench. There is no doubt that this work, not undeservedly, lashed many abuses, but it, at the same time, showed not so much a desire for reform as a reckless malignity against every class and person wielding power and influence in society. The clear tenderness of his style and the appliance of his illustrations have made many readers regret their defects, which became still more flagrant in his subsequent "Age of Reason." He acted as a citizen of France. But, for all his sympathy with the republic, he narrowly escaped being guillotined by Robespierre, and he died at Baltimore on the 8th of June, 1809.—*Cycl. Univ. Biog.*

magistrate of the most exalted understanding and of the most uncorrupted integrity. He treated me, not with contempt indeed, for of that his nature was incapable, but he put me aside with indulgence, as you do a child when it is lisping its prattle out of season." When the Libel Bill was receiving its final triumph in the House of Lords, Lord Camden beautifully alluded to the great man then on the verge of the tomb, whose doctrine was now forever to be overthrown: "Though so often opposed to him, I ever honored his learning and his genius; and, if he could be present, he would bear witness that personal rancor or animosity never mixed with our controversies."¹

No one born in the reign of Queen Anne ought to be severely blamed for entertaining apprehensions for the safety of the state from permitting juries to determine what publications are innocent or criminal. We should recollect that Lord Somers and the leaders of the Revolution of 1688 would not venture for some years to allow printing without a previous license, and that, in the opinion of many of the most enlightened men in the next generation, a licenser could only be dispensed with upon the condition that the sentence upon writings after they were published should be pronounced by permanent functionaries whom the Crown should select for having a sufficient horror of everything approaching to sedition. It was not till after a struggle of half a century, and under a minister then highly liberal (although he afterwards tried to hang a few of his brother reformers who continued steady in the cause²), that the bill passed declaring that,

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Progress
of opinion
respecting
the law of
libel.

1. 29 Parl. Hist. 1404-1534.

2. Much to the credit of Mr. Pitt, he warmly supported Fox's Libel Bill with the whole influence of Government against Lord Thurlow and the Tory lawyers, who eagerly opposed it. Yet, in little more than two years, the same Mr. Pitt tried to make an attempt to improve our representative system—an overt act of high treason.

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on a trial for libel, the jury, in giving their verdict, should have a right to take into consideration the character and tendency of the paper alleged to be libellous. Still the truth of the facts stated in the publication complained of could not be inquired into; for half a century longer the maxim prevailed, "the greater the truth the greater the libel," and it was only in the year 1845 that "Lord Campbell's Libel Bill" passed, permitting the truth to be given in evidence, and referring it to the jury to decide whether the defendant was actuated by malice, or by a desire for the good of the community.¹ These successive alterations of the law are now admitted to have operated beneficially—not only being favorable to free discussion, but really tending to restrain the licentiousness of the press. Candor, however, requires the confession that they were attended with some hazard, and we must not confound excessive caution with bigotry or a love of arbitrary government. The great problem for free states now to consider is, how journalism is to be rendered consistent with public tranquillity and the stability of political institutions. A licenser can never more be endured; and against a journal which daily excites to insurrection and revolution, a prosecution of the proprietor or printer for a libel—to be tried before a jury after the lapse of several months—affords no adequate remedy. If the great capitals of Europe are to be constantly in "a state of siege," we may be driven to regret the quiet old times when royal gazettes, announcing court appointments, were the only periodicals.

Feb. 1786.
Action by
Mr. Pitt
for a libel
accusing
him of
gambling
in the
Funds.

There was one other interesting libel case before Lord Mansfield—which occurred shortly before his final retirement. This was an action for damages, most laudably commenced by Mr. Pitt, the Prime Minister,

against the proprietor of the MORNING HERALD newspaper for several paragraphs which had appeared in successive numbers of that journal, accusing him of gambling in the Funds, and fraudulently availing himself of official information to make money on the Stock Exchange—with a statement that “his friends were deeply grieved by the discovery, but were trying to palliate his misconduct.” Erskine was counsel for the defendant, and, admitting that the paragraphs were without any foundation in truth, suggested that they had been inserted through inadvertence,—delivered a warm eulogium on the purity, disinterestedness, and stainless character of the illustrious plaintiff,—dwelt upon the high estimation in which he was held by the public,—insisted that he could have suffered nothing from an absurd charge which nobody believed,—and therefore urged the jury to award him only nominal damages.—Lord Mansfield, forgetting, as might be expected, the hereditary enmity between himself and the plaintiff, thus summed up :

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“Gentlemen of the Jury : You have had a very ingenious speech, but upon the false principle that a man of the fairest character may be traduced with the greatest impunity. From defamation the law implies damage without actual proof ; it is the province of the jury in their discretion to assess it, and, in doing so, they are to take into consideration the character and situation of the plaintiff, the malignity of the libel, and all the other circumstances which aggravate the intended wrong. Lord Sandwich proved no special damage from the libel upon him, yet the jury gave him 2000*l.* ; and Lady Salisbury, the other day, recovered 500*l.* before me for a libel, although she could not have proved that any one thought the worse of her for being so libelled, and no one ever supposed that the jury was too lavish. The Right Honorable Gentleman who brings this action deserves the thanks of the public for submitting such a foul attack upon his character to the cognizance of you his countrymen. I agree with Mr. Bearcroft [counsel for Mr. Pitt] that it is scandalous in a private individual, who is in

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possession of political information which will influence the value of the Funds, to make a speculative bargain on the Stock Exchange with another man who is ignorant of it, for they do not deal on equal terms; but in a minister of state such conduct is every way infamous. Besides trying to cheat the individuals with whom he bargains, he exposes himself to a powerful temptation, and gives himself an interest against his duty, which may prove the ruin of the nation. Suppose, on entering into a negotiation for peace, he buys largely for a future day, he has an inducement to submit to any terms, that peace may be concluded; and the sum that he realizes is as much a bribe as if he had received it from the enemy. The newspaper containing this charge is circulated all over the kingdom and all over Europe. How can the readers tell whether a story, told so circumstantially, may not be true in spite of the high reputation which the plaintiff has hitherto maintained? To be sure, many ministers have done the same; some have been known to do it,—some have been strongly suspected of doing it, while others have stood clear. The assessing of damages, gentlemen, is entirely with you; but I must beg you to recollect that there is a very serious question before you, in which all the King's subjects are concerned,—whether there shall be any protection to the reputations of honorable men, either in public or private life? God forbid I should ever subscribe to the doctrine that the fairer a man's or woman's character may be, they are the less entitled to reparation when they are defamed!"

The jury found a verdict for the plaintiff, with 250*l.* damages.¹

Lord Mansfield was now in his eighty-second year. Hitherto he had hardly ever been a day absent from his court since his first appointment as Chief Justice, and, except when he was upon the circuit, he rarely went farther from London than his villa at Kenwood, where his great amusement was ornamental gardening. But he at last found that old age had not in his case altogether lost its power in weakening muscles and stiffening joints; and, in the hope of renovating his

1. Political Anecdotes, i. 360-366.

frame, he repaired to Tunbridge Wells,¹ which had long been a fashionable watering-place. Here he was worshipped as an idol; and much bad verse, both English and Latin, was offered up to him. I shall give specimens, the most favorable which I can select:

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Lord
Mansfield's
visit to
Tunbridge
Wells.

INVOCATION TO THE NYMPH OF THE SPRING AT TUNBRIDGE WELLS,
ON LORD MANSFIELD HAVING EXPRESSED AN INTENTION OF LEAVING THE PLACE. BY A LADY.

"Arise, fair Naiad! from thy well;
Arise, and tune thy vocal shell,
Try ev'ry soft bewitching art,
To charm the ear, and please the heart,
Till Mansfield shall thy voice obey,
And near thy spring consent to stay.
Sweetly warble in his ear,
'Health, and all her train are here;
Health, whose liberal hand bestows
Nights of undisturb'd repose,
Hours of social mirth and glee,
Days of soft tranquillity.'"

EPIGRAM ON THE OCTOGENARIAN LORD MANSFIELD, BY THE REV. MR. MADDAN.

"Inter mortales vetus est vox veraque sæpe,
Bis sunt infantes, qui senuere semel;
At te lustrantes juvenemque senemque fatemur
Te semel infantem, bis nituisse virum."

1. Tunbridge Wells, one of the most popular inland watering-places in England, with 25,000 inhabitants, is finely situated in a hilly district on the borders of Kent and Sussex, and owes its present favor rather to its pretty surroundings and invigorating air than to its somewhat weak chalybeate springs, the want of any appreciable quantity of free carbonic acid in which puts them out of competition with Spa or Schwalbach. The springs were discovered by Lord North about 1606, and Tunbridge soon became a fashionable watering-place. Somewhat later it seems to have been a favorite resort of the Puritans, who have left traces of their partiality in such names as Mount Ephraim and Mount Zion; and it is still specially affected by adherents of the Evangelical school. The season is at its height in August and September. The most prominent architectural feature of the town is the Pantiles, or Parade, deriving its name from the earlier style of pavement. Many of the houses in the Parade are very quaint and picturesque; and it is still, as in the days of Queen Anne and the Georges, the favorite promenade of the visitors. It also contains many of the best shops, including several for the sale of "Tunbridge ware," or small articles in wood mosaic. The Assembly Rooms and the Pump Room, with the chief mineral spring, are at the lower end of the Pantiles.—*Baedeker's Great Britain*.

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Interview
between
Lord
Mansfield
and Lord
George
Sackville,

The benefit he might have derived from this excursion was greatly impaired by an interview with his old friend Lord George Sackville,¹ now Lord Viscount Sackville,—about to suffer under a sterner sentence than that pronounced upon him after the battle of Minden. The scene is thus graphically described by Richard Cumberland:²

1. George Sackville, a soldier and statesman, first Viscount Sackville, born 1716, died 1785. He entered the military service as Lord George Sackville, was present at the battles of Dettingen and Fontenoy, served under the Duke of Cumberland against the Young Pretender, and rose to the rank of lieutenant general. At the battle of Minden, Aug. 1, 1759, he commanded the allied cavalry, and for his failure to execute the commander-in-chief's order to charge the retiring French infantry he was court-martialled and dismissed from the service. George II. struck his name from the list of privy councillors; but on the accession of George III. he was again taken into favor. In 1775, under the name of Lord George Germain (assumed in compliance with a will), he entered the cabinet of Lord North as Secretary of State for the Colonies, retaining the office during the American revolutionary war, and incurring great unpopularity by his opposition to efforts for the termination of hostilities. In Feb., 1782, the King created him Viscount Sackville.—*Beeton's Biog. Dict.*

2. Richard Cumberland was born at Trinity College, Cambridge, Feb., 1731–32, being son of the Rev. Denison Cumberland (afterwards bishop successively of Clonfert and Kilmore) by Joanna, daughter of Dr. Richard Bentley, master of Trinity College. He was educated at Bury and Westminster schools, and became a fellow of Trinity. Subsequently he was appointed private secretary to Lord Halifax, and when that nobleman went to Ireland as lord lieutenant accompanied him as under-secretary. He afterwards obtained an office at the Board of Trade, and ultimately became secretary, which situation he held until the abolition of the Board under Mr. Burke's bill. In 1780, conceiving that there was an opening for a separate negotiation with the court of Spain, he went with his family to Lisbon, and thence to Aranjuez. The negotiation was preposterously conducted, and entirely failed, and on his return he was neglected and disavowed by the ministry. He thereupon retired into private life, residing principally at Tunbridge Wells. Mr. Cumberland wrote a great number of dramatic pieces, of which the "West Indian," the "Jew," and the "Wheel of Fortune" may be regarded as possessing considerable merit. His "Observer" entitles him to a respectable place among the British essayists, but his poems, novels, theological tracts, and miscellaneous pieces are now but little regarded. He published memoirs of his own life, and continued to compose for publication until nearly his last hour, for it is to be lamented that his old age was exposed to the discomfort attending narrow and re-

“ He wished to take his leave of the Earl of Mansfield, then at Tunbridge Wells : I signified this to the Earl, and accompanied him in his chaise to Stoneland. I was present at their interview. Lord Sackville just dismounted from his horse, came into the room where we had waited a very few minutes, and staggered as he advanced to reach his hand to his visitor. He drew his breath with palpitating quickness, and, if I remember rightly, never rode again. There was a deathlike character in his countenance, that visibly affected and disturbed Lord Mansfield in a manner that I did not expect, for it had more of horror in it than a firm man ought to have shown, and less perhaps of other feelings than a friend, invited to a meeting of that nature, must have discovered had he not been frightened from his propriety. Lord Sackville addressed him in the following words : “ But, my good Lord, though I ought not to have imposed upon you the painful ceremony of paying a last visit to a dying man, yet so great was my anxiety to return you my unfeigned thanks for all your goodness to me, all the kind protection you have shown me during my unprosperous life, that I could not know you were so near me and not wish to assure you of the *invariable respect I have entertained for your character*, and now in the most serious manner to solicit your forgiveness if I have appeared in your eyes, at any moment of my life, unjust to your great merits, or forgetful of your many favors.’ Lord Mansfield made a reply perfectly becoming and highly satisfactory.” ¹

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It has been supposed that Lord Sackville's object was by a dying declaration to remove from Lord Mansfield's mind all suspicion of the truth of the story, then very generally circulated, that he was the author of the Letters of Junius. Whether such a suspicion had existed, or how far it was removed, I am unable to explain, for Lord Mansfield always observed a studied silence respecting the much agitated question of the

duced circumstances. He is said to have been of a peculiarly jealous and irritable temper, and to have been the prototype of Sheridan's Sir Fretful Plagiary. Mr. Cumberland died May 7, 1811, and was buried in Westminster Abbey.—*Cooper's Biog. Dict.*

1. Memoirs, vol. ii. p. 249, 250. Cumberland says he does not trust to memory—he transcribes.

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authorship of these libels. He must have formed a shrewd conjecture as to the identity of his assailant,—but, like his opinion on the Middlesex election, *it died with him.*

The shock he sustained on this occasion might be caused merely by seeing a younger man than himself, with whom he had long been familiar, stepping into the grave.¹

Lord
Mansfield
unable to
sit in court,
retains his
office.

After drinking the waters some weeks his strength was a little recruited, but when Michaelmas Term arrived he found his bodily infirmities multiply upon him, and he was unable to take his seat on the bench, although his mental faculties retained all their freshness. His great object now was, that Mr. Justice Buller should be his successor, and he would have been willing immediately to resign in favor of one whom he so much valued. Mr. Pitt, being sounded upon the subject, would not listen to what he considered *a job*. When he himself was at the bar, and went the Western Circuit, he had seen Buller try a *Quo Warranto* cause,

1. Our Chief Justice seems then to have been affected very differently from what might have been expected from his own notion of human nature, as expressed by him when a much younger man, if we may believe the following anecdote: "Lord Mansfield was in the habits of intimacy with Bishop Trevor, who being much indisposed, Lord Mansfield called to see him; and while he was in the room with the bishop's secretary for a minute the late Dr. Addington, his physician, was brought in a chair by two able-bodied chairmen, who were proceeding to carry him upstairs, pale and wan, and much debilitated, to his patient. The bishop's secretary, fearing that his lord would be low-spirited at such a scene, begged of Lord Mansfield to interpose and go up first. The quickness of the reply could not fail to be treasured up. It was, 'By no means; let him go; you know nothing of human nature: the bishop will be put in good spirits on seeing any one in a worse condition than himself.' Lord Mansfield was prophetic; and, on Dr. Addington's taking leave, the chairmen had no sooner quitted the room with the sick-fare than the bishop humorously said, 'I fear the crows will soon have my excellent physician.' But in this he was mistaken. Bishop Trevor died in a few weeks. Dr. Addington lived many years after he had been consigned to the crows by his princely patient the Bishop of Durham."—See *Holliday*, 184.

upon which depended the right to return members of parliament for a Cornish borough long considered the property of the learned Judge himself. Pitt, anxious at once to promote the pure administration of justice and to reward a political partisan, wished exceedingly to give the office to Sir Lloyd Kenyon, the Master of the Rolls, who was not only a very honest man and deep lawyer, but had been very useful to the Government in the Westminster election in 1784, when Mr. Fox was prevented from being returned for that city. As Lord Mansfield was balked in his wishes, he continued to hold his office—no doubt being flattered by physicians into the hope that he might recover his vigor and resume his seat—but, I believe, principally influenced by the belief that Buller, having a full opportunity to display his learning and talents, would acquire such reputation that, by the public voice, the Government would be compelled to appoint him. Ashurst was the senior puisne judge, and nominally presided, but Buller took the decided lead, and for seven terms—extending over nearly two years—he acted the part of Lord Chief Justice. He gave considerable satisfaction by his quickness, his assiduity, and his thorough acquaintance with every branch of his profession,¹ but Mr. Pitt remained inflexible—saying “he could not forget the trial at Bodmin any more than the merits and services of Sir Lloyd.” He likewise threw out some doubts as to the propriety of a high judicial office being so long held by one disabled by age from discharging its duties, and the difficulty he should have to defend this affair if it should unfortunately be mooted in the House of Commons.

1. Durnford and East's Reports, vols. i. and ii., bear creditable testimony to his powers as a judge; and I make no doubt that he would have acquitted himself very respectably as the successor of Lord Mansfield. To cover his mortification, on the appointment of Lord Kenyon, he soon left the Court of King's Bench, and hid himself in the Common Pleas.

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XXXIX.
He resigns
the office of
Chief Jus-
tice.

On the 4th of June, 1788, Lord Mansfield sent in his resignation. A meeting was immediately called of the members of the King's Bench bar, who not only revered his high judicial qualities, and were flattered by the splendor he had cast upon their order, but were warmly attached to him by the courtesy and kindness with which he had ever treated them.¹ Having delivered warm encomiums upon his character and conduct, they unanimously resolved that a valedictory address should be presented to him in the manner that, upon inquiry, should be found most agreeable to his feelings; and the manner of presenting it was left to the Hon. Thomas Erskine, who had for some years been their distinguished leader.

After proper inquiry, he wrote the following letter, and despatched it by a messenger to Kenwood :

Address to
him by the
King's
Bench bar.

" My Lord,—It was our wish to have waited personally upon your Lordship in a body, to have taken our public leave of you, on your retiring from the office of Chief Justice of England ; but, judging of your Lordship's feelings upon such an occasion by our own, and considering, besides, that our numbers might be inconvenient, we desire in this manner affectionately to assure your Lordship, that we regret, with a just sensibility, the loss of a magistrate whose conspicuous and exalted talents conferred dignity upon the profession, whose enlightened and regular administration of justice made its duties less difficult and laborious, and whose manners rendered them pleasant and respectable.

" But, while we lament our loss, we remember, with peculiar satisfaction, that your Lordship is not cut off from us by the sudden stroke of painful distemper, or the more distressing ebb of those extraordinary faculties which have so long distinguished you amongst men ; but, that it has pleased God to allow to the evening of an useful and illustrious life, the purest enjoyments which nature has ever allotted to it,—the un-

1. It was thought better not to call a meeting of the whole Bar of England, for in that case Sir John Scott, the Attorney General, must have presided ; and he was well known to bear a grudge to Lord Mansfield, and was always disposed to *vilipend* him.

clouded reflections of a superior and unfading mind over its varied events, and the happy consciousness that it hath been faithfully and eminently devoted to the highest duties of human society, in the most distinguished nation upon earth. May the season of this high satisfaction bear its proportion to the lengthened days of your activity and strength !”

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While the messenger waited, Lord Mansfield penned and despatched the following answer :

“ Dear Sir,—I cannot but be extremely flattered by the letter which I this moment have the honor to receive. If I have given satisfaction, it is owing to the learning and candor of the Bar. The liberality and integrity of their practice freed the judicial investigation of truth and justice from many difficulties. The memory of the assistance I have received from them, and the deep impression which the extraordinary mark they have now given me of their approbation and affection has made upon my mind, will be a source of perpetual consolation in my decline of life, under the pressure of bodily infirmities which made it my duty to retire.

“ I am, Sir, with gratitude to you and the other gentlemen,

“ Your most affectionate and obliged humble servant,

“ MANSFIELD.

“ Kenwood, June 15, 1788.”

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XL.

sion, in the year 1787 published a pamphlet recommending the introduction of jury trial into Scotland in certain specified civil actions, and requested that he might have the opinion upon the subject of the individual best qualified to consider it from his unprecedented experience of juries and his familiar knowledge of the law both of Scotland and England. This request was conveyed through Lord Henderland, another judge of the Court of Session, who was related to Lord Mansfield by blood, and was married to his niece. The great jurist, thus consulted as an oracle, was then disabled from writing by rheumatism in his hand, and, on the score of indisposition, civilly declined giving any opinion to Lord Swinton; but his niece, Lady Anne, acting as his amanuensis, wrote a note to Lord Henderland, which thus concludes: "L^d H^d will be so good to say so much, and no more, to L^d Swinton; but the moment L^d M^d heard the papers read, he dictated the inclosed memd^m for L^d H^d's private use. He thinks the proposed introduction of juries is a very rash innovation, and will be attended with many consequences which no man alive can foresee."

the bench, with the title of Lord Swinton, on December 21, 1782, and, on the promotion of Robert Macqueen of Braxfield in 1788, was also made a lord of justiciary. He retained both appointments till his death. He died at his residence, Dean House, Edinburgh, on January 5, 1799. Swinton married Margaret, daughter of John Mitchelson of Middleton. By her he had six sons and seven daughters. Swinton published: 1. "Abridgment of the Public Statutes relative to Scotland, etc., from the Union to the 27th of George II.," 2 vols., 1755; to the 29th of George III., 3 vols., 1788-90. 2. "Free Disquisition concerning the Law of Entails in Scotland," 1765. 3. "Proposal for Uniformity of Weights and Measures in Scotland," 1779. 4. "Considerations concerning a Proposal for dividing the Court of Session into Classes or Chambers; and for limiting Litigation in Small Causes, and for the Revival of Jury-trial in certain Civil Actions," 1789. Lord Cockburn, in his "Memorials of his Time," remarks: "These improvements have since taken place, but they were mere visions in his time; and his anticipation of them, in which, so far as I ever heard, he had no associate, is very honorable to his thoughtfulness and judgment."—*Dict. Nat. Biog.*

Here follows the memorandum which was inclosed, every line of which is worth a subsidy :

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XL.

"Great alterations in the course of the administration of justice ought to be sparingly made, and by degrees, and rather by the Court than by the Legislature. The partial introduction of trials by jury seems to me big with infinite mischief, and will produce much litigation.

"Under the words proposed, it may be extended almost to anything, — *reduction, restitution, fraud, injury*. It is curious that fraud, which is always a complicated proposition of law and fact, was held in England as one of the reasons for a court of equity, to control the inconveniences of a jury trying it. The giving it to the desire of both parties might be plausible ; but where one only desires that mode of trial it is a reason against granting it, because many causes and persons have popular prejudices attending them which influence juries.

"A great deal of law and equity in England has arisen to regulate the course and obviate the inconveniences which attend this mode of trial. It has introduced a court of equity distinct from a court of law, which never existed in any other country, ancient or modern ; it has formed a practice by the courts of law themselves and by acts of parliament, bills of exceptions, special verdicts, attainments, challenges, new trials, etc.

"Will you extend by a general reference all the law and equity now in use in England relative to trials by jury ? The objections are infinite and obvious. On the other hand will you specify particularly what their system should be ? The Court of Session and the Judges of England, added together, would find that a very difficult task."

These principles were unfortunately overlooked in the year 1807, when jury trial, exactly according to the English model, with its unanimity, special verdicts, and bills of exceptions, was introduced into Scotland. The experiment, I am afraid, has proved a failure, and Lord Mansfield's predictions have been fatally verified.

An amiable trait in his character, which distinguished him to the last, was, that he took a lively

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interest in the welfare of all connected with him. By his advice, two sons of Lord Henderland (the present Mr. Murray of Henderland, and Lord Murray, lately Lord Advocate, now a Judge of the Court of Session) were sent to be educated at Westminster School.¹ The aged ex-Chief Justice was exceedingly kind to the boys, had them at Kenwood during the holidays, and sought to inspire them with a love of literature.

In a letter from Mr. Murray, not written for publication, but from which I hope I may, without impropriety, make a few extracts, he says—

Recollections of
Lord
Mansfield
by his
grand-
nephew,

"I first saw Lord Mansfield when I went to Westminster School in 1787, and used occasionally to spend part of my holidays at Kenwood. He was very kind, treating me familiarly as a boy, and always called me *schoolfellow*. He took a great interest in all that was going on in Westminster School, used to talk of his boyish days, and relate anecdotes of what occurred when he was there. I remember one, of his having made a plum-pudding, and, there being no other apparatus for the purpose, it was boiled in his nightcap: he told this with great glee. He always drank claret, and had a small decanter containing a few glasses placed by him at dinner, which he finished.

"He still took pleasure in ornamenting his grounds. Some cedars in the wood opposite the house were planted by his own hand.

"He was a great admirer of Pope, and occasionally selected passages from his poems which he taught me to recite. His voice and modulation were beautiful.

"He told me he had conversed with a man who was present at the execution of the Blessed Martyr. How wonderful it seems that there should only be one person between me and him who saw Charles's head cut off!"

His amuse-
ments.

He used to have parties of King's Bench lawyers to spend a day with him, and I have myself heard some

1. It would appear that Lord Henderland was likewise influenced by the opinion of Dr. Johnson, with whom he had discussed the merits of English public schools, in a party at "The Mitre." See Boswell's Life of Johnson, iii. 9.

of those who were present describe how agreeable he was. On one occasion they found him reading under a spreading beech-tree, when a young gentleman said to him rather flippantly, "Instead of listening to the wrangling of Westminster Hall, how much better for your Lordship to be '*recubans sub tegmine fagi*.'"¹ He good-humoredly replied,—

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XL.

"O Melibœe, DEUS nobis hæc otia fecit."²

A great amusement for him was, to hear what was going on in the Court of King's Bench. With this view his countryman, James Allan Park,³ who became

1. "Reclining under the shelter of the beech."

2. "O Melibœus, God has given us the blessings of ease."

3. James Alan Park was the son of James Park, Esq., a respectable surgeon in Edinburgh, and was born in that city on April 6, 1763. When very young he came to England, and was admitted into the society of the Middle Temple, by which he was called to the bar in June, 1784. He was fortunate enough to gain the friendship and patronage of his noble countryman Lord Mansfield, under whose encouragement he published in 1787 a work on the Law of Marine Insurances, comprehending the decisions and dicta of the Chief Justice, who had been almost the creator of the system. This work was found to be so useful to mercantile and legal men that it passed through many editions, with improvements by its author, and at once brought him into professional notice. Joining the Northern Circuit, he was successful in obtaining a considerable practice, which before long increased till he became one of the leaders of that bar. In Westminster Hall also he acquired much business, as well from that numerous body engaged in maritime affairs and insurance cases as from other clients who were observant of the extreme interest he took in his causes, and the clearness and earnest simplicity of his advocacy. He gleaned much learning and experience from his intimacy with Lord Mansfield, to whom, after his lordship's retirement, he was in the habit of taking an account of the daily proceedings in court, and profiting by the observations made by the legal Nestor upon the different points decided. In 1791, before the death of Lord Mansfield, Mr. Park was appointed Vice-chancellor of the Duchy of Lancaster; and in 1795 Recorder of Preston. In 1799 he received a silk gown as King's counsel; and in 1802 he was elected Recorder of Durham. On the retirement from the circuit of Mr. Law (afterwards Lord Ellenborough) when he became Attorney General, Mr. Park succeeded to the undisputed lead, which he retained for more than a dozen years, dividing that in London with Sir Vicary Gibbs and Sir William Garrow; and in 1811 he was made Attorney General of Lancaster. In most

CHAP. famous by compiling his decisions on the law of mari-
 XL. time insurance, used to visit him almost every evening during term, and to read to him what Lord Kenyon had been ruling in the morning. He bore with much composure the sneers at "the equitable doctrines which had lately been introduced into that court"; and he revenged himself by laughing at his successor's false quantities and misapplied quotations, which induced George III., at last, to advise the new Chief Justice "to give up his bad Latin, and stick to his good law."

Lord Mansfield's contemporaries being all swept

of the great cases of the time his name appears. In 1805 he was engaged in the defence of Judge Johnson, and of Henry Delahay Symonds, the publisher of the *Anti-jacobin Review*, both for libels. In 1809 and 1813 he was employed by the government in the prosecution of several cases in the North, the principal of which were those against the ringleaders of the Luddite riots. A sincere and zealous churchman, he was, by the religious classes of the community, looked up to with great esteem. Among his intimates was William Stevens, the modest and benevolent treasurer of Queen Anne's bounty with whom he formed a committee in support of the Scotch Episcopal clergy, and succeeded in obtaining the repeal of the penal statutes then in force against them. He was one of the original members of "Nobody's Club," so called from the *nom de plume* of Mr. Stevens, in whose honor it was founded; and which, lasting till the present day, has numbered among its members some of the most eminent men in the Church and in science, law, and literature. At Mr. Stevens' death Mr. Park published a memoir of him, which has been lately reprinted. He was also the author in 1804 of a Layman's "Earnest Exhortation to a Frequent Reception of the Lord's Supper." Without any pretensions to eloquence, his advocacy was effective from the extreme anxiety he displayed for his client; and he gained his verdicts by the apparent confidence and sincerity with which he impressed the jury with the injustice of withholding them, as much as by the merits of the causes themselves. After thirty years' successful practice at the bar he succeeded Sir Alan Chambers as a judge of the Common Pleas on January 22, 1816, and was knighted. He sat in that court till his death on December 8, 1838, a period of nearly twenty-three years, during which he served under four sovereigns. With no particular eminence as a lawyer, he proved himself by his good sense and strict impartiality, as well as by the respectability of his character, a most useful administrator of justice; the only drawback from the general respect which he commanded was a certain irritability about trifles, which too frequently excited the jocularities of the bar.—*Foss's Lives of the Judges.*

from the stage, he wisely consoled himself by making acquaintance with the rising generation; and he rejoiced that he could still converse with the illustrious masters of wisdom to be found in his library. He justly thought contemptuously of the low state into which literature had fallen when Hayley¹ was considered the successor of Pope; and he used to give as a toast, "YOUNG FRIENDS AND OLD BOOKS."

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He never was considered avaricious; his establishment was upon a footing which became a wealthy nobleman, and he would sometimes give away money generously; yet he certainly had considerable pleasure in watching the enormous accumulation of his fortune. He neither invested it in the funds nor bought land with it, but had it all secured on mortgage, saying, "The funds give interest without principal, and land principal without interest, but mortgages both principal and interest."²

His care of
his fortune.

After his retirement, he took no part whatever in politics: like the gods of Epicurus, he looked down upon the events that were passing in the world without in any degree seeking to influence them. The last time he ever attended in the House of Lords was on the 22d of May, 1788, when his presence was required in consequence of some proceedings connected with a

1. William Hayley, a poet and miscellaneous writer, born Nov. 9, 1745, at Chichester, of which cathedral his grandfather was dean. He received his education, first at the school of Kingston-upon-Thames, and next at Eton, from whence he removed to Trinity College, Cambridge. On leaving the university he retired to his estate of Earham, Sussex, where he resided till the loss of his son, about 1800, so afflicted him that he removed to Felpham. Died Nov. 12, 1820. His principal poems are "An Essay on Painting," "An Essay on History," "An Essay on Epic Poetry," "The Triumphs of Temper." An edition of these, with other poems and plays, was printed in 6 vols. 8vo. His principal prose works are "An Essay on Old Maids," 3 vols., and the Lives of Milton, Cowper, and Romney the painter.—*Cooper's Biog. Dict.*

2. It is said that, at the time of his death, the annual interest on his mortgages amounted to 30,000*l.*

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XL.

He ab-
stains from
giving any
opinion
upon the
Regency
question.

writ of error from the Court of King's Bench ; and he assisted neither the Government nor the Opposition by his proxy.¹ It seems most wonderful that he should not have interfered in the unprecedented crisis which immediately followed, when the kingly office was for some months suspended by the insanity of George III. One would have supposed that the ex-Lord Chief Justice of England, who had been familiarly acquainted with the leaders of the Revolution effected exactly a century before, would, like his great rival, have been led to his seat, if unable to walk without support, and, at the risk of dying in the effort, would have proclaimed to his countrymen how, in his opinion, anarchy was to be warded off and the constitution was to be preserved. He once more showed that want of boldness which always prevented him from reaching the first rank of statesmen. As a sound constitutional lawyer, I think he must have come to the conclusion that the right of electing a regent arrogated to themselves by the two Houses of Parliament was wholly inconsistent with the principles of hereditary monarchy ; and that the heir apparent was entitled to exercise the prerogatives of the crown during the King's incapacity, as upon his natural demise. But he was probably afraid of avowing a doctrine which, though truly conservative, was most distasteful to all connected with the Government, on account of the transfer of power from one party to another which it was likely to produce ; and he might have been reluctant to ally himself with Loughborough, who we now know, and he might then have discovered, had formed the desperate scheme of at once placing the Prince of Wales upon the throne without the sanction of parliament.² However this may be, Lord Mans-

1. I have ascertained these facts by searching the Lords' Journals ; which give the names of all the peers present at every meeting of the House, and all the proxies entered, every session.

2. See Lives of the Chancellors, vol. vi. ch. clxx.

field quietly ruminated amidst his cedars at Kenwood while the furious struggle was going on almost within his hearing at Westminster, and when the phantom of royalty was evoked by a *talisman* called the GREAT SEAL. Like all good subjects, he rejoiced in the King's recovery, which rescued the country from such embarrassment, and he joined in the splendid illumination which celebrated that event.¹

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Nevertheless he still fostered a spite against Mr. Pitt, which he was at no pains to conceal in private conversation; and, enjoying the difficulty into which the minister had fallen by his indiscretion respecting the Russian armament, he expressed a hope "that the power which had been acquired by empty rhetoric and a pretended wish for reform was drawing to a close."

But at the breaking out of the revolution in France he dreaded that the same wild love of liberty might be propagated in this country, and he was desirous that the Government should be supported. He took a very gloomy, and, as it turned out, a very just, view of this movement. His medical attendants now seem to have been his chief confidants. When the Constituent Assembly had agreed upon the first of the many constitutions attempted by our Gallic neighbors, and this seemed for the moment to be generally popular, Mr. Combe, his apothecary, observed to him, "Well, my Lord, the troubles in France are now over." "*Over*, sir, do you say?" answered Lord Mansfield; "my dear sir, they are not yet begun!"

His views
of the
French
Revolution.

On another occasion, when he had a visit from Dr. Turton, his physician, he thus broke off a discussion respecting his symptoms:

"Instead of dwelling on an old man's pulse, let me ask

1. On this occasion there was a grand display of fireworks from Kenwood, to the delight of the inhabitants of Highgate and Hampstead.

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you, dear Doctor, what you think of this wonderful French Revolution?" *Dr. Turton* : "It is more material to know what your Lordship thinks of it." *Lord Mansfield* : "My dear Turton, how can any two reasonable men think differently on the subject? *A nation* which, for more than twelve centuries, has made a conspicuous figure in the annals of Europe : a nation where the polite arts first flourished in the Northern Hemisphere, and found an asylum against the barbarous incursions of the Goths and Vandals : *a nation* whose philosophers and men of science cherished and improved civilization, and grafted on the feudal system, *the best of all systems*, their laws respecting the descents and various modifications of territorial property :—to think that *a nation* like this should not, in the course of so many centuries, have learned *something* worth preserving, should not have hit upon some little *code of laws*, or a few principles sufficient to form one ! Idiots ! who, instead of retaining what was valuable, sound, and energetic in their constitution, have at once sunk into barbarity, lost sight of first principles, and brought forward a farrago of laws fit for Botany Bay ! It is enough to fill the mind with astonishment and abhorrence ! A constitution like this may survive that of an *old man*, but nothing less than a miracle can protect and transmit it down to posterity !"

Horrors broke out and succeeded each other even more rapidly than he had anticipated ; and, old as he was, he lived to hear the news that, every vestige of liberty being extinguished in France, the Reign of Terror was inundating the country with blood, and Louis XVI., the constitutional king, was executed on the scaffold as a malefactor.

By Lord Mansfield's advice, his nephew, Lord Stormont, henceforth took an active part in the debates of the House of Lords, as a defender of the Government ; saying, "that he was called upon, not by dislike of one set of public men or preference of another, but by the duty of averting the danger which threatened the constitution of the country, to range himself under the broad banner of the law, and to add one to the

great phalanx that was to shield it from the poisoned arrows directed against it." ^{CHAP. XL.} ¹

Mr. Pitt now voluntarily offered the new grant of the earldom of Mansfield, with a direct remainder, to Lord Stormont, without which this nobleman would never have been a British peer.

The ex-Chief Justice was probably the more gratified by the coalition which took place with a portion of the Whigs as it led to the dismissal of Lord Thurlow, whom he had ever disliked, and the transfer of the great seal to Wedderburn, for whom he felt kindness, notwithstanding the political lubricity which had marked the career of this splendid adventurer and had brought some disgrace on their common country.

But the hour was at hand in which to the dying Lord Mansfield all worldly speculations were vanity, and he had only to think of the awful change by which he was to enter into a new state of existence. So completely had he retained his mental faculties, that, only a few days before his last illness, his niece, Lady Anne, having in his hearing asked a gentleman what was the meaning of the word *psephismata* in Mr. Burke's book on the French Revolution, and the answer being that it must be a misprint for *sophismata*, the old Westminster scholar said "No, *psephismata* is right;" and he not only explained the meaning of the word with critical accuracy, but quoted offhand a long passage from Demosthenes to illustrate it. ^{His continuing powers of memory.}

Though never afraid of death, towards which he looked with composure and confidence, he was always afraid of suffering *pro forma*, as he expressed it; and a few years previously he had with much earnestness exacted a solemn promise from the physician who attended him, "that he would not unnecessarily torment him, but that, when he from experience should think his

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XL.

time was come, he would let him die quietly." The time had arrived when this injunction was to be obeyed.

His last
illness.

On Sunday, the 10th of March, 1793, although the night before he had been quite cheerful, and had with clearness expounded to Lord Stormont the merits of a law case then depending in the House of Lords, he did not talk at breakfast as usual, but seemed heavy, and complained of being very sleepy. He was placed in bed, and, his pulse being low, stimulants and cordials were ordered for him. On Monday he was rather better, and on Tuesday he desired to be taken up and carried to his chair; but he soon wished again to be in bed, and said, "Let me sleep! let me sleep!" It might have been expected that, in the wandering of his thoughts which followed, he might have conceived himself in some of the most exciting scenes of his past life, and that he might have addressed some taunt to Lord Chatham respecting the action for damages to be brought against the House of Commons,—or, like Lord Tenterden, he might have desired the jury to consider whether the publication and the *innuendoes* were proved on a trial for libel, cautioning them to leave the question of *libel or no libel* for the court. But he never spoke more. On his return to bed he breathed freely and softly like a child, and with as calm and serene a countenance as in his best health, though apparently ever after void of consciousness. An attempt to give him nourishment having failed, his mouth was merely moistened with a feather dipped in wine-and-water. In this state he languished free from pain till the night of Wednesday the 20th of March, when he expired without a groan "in a good old age, full of days, riches, and honor." He had entered his 89th year; and as his life had been long and prosperous, so his death was such as he had desired. He was amply prepared for it. From the time when he was unable to

His death.

attend his parish church, the communion had, at short intervals, been privately administered to him; and he was in the habit of piously declaring that he was ready to obey the summons from the world in which he had enjoyed so many blessings, contented and grateful.

- Although he had long withdrawn from the gaze of mankind, the news of his death caused a deep sensation, and there was a general desire that he should have a public funeral. All the judges and members of the bar had resolved to attend it in a body; and Whig statesmen as well as Tory intimated a desire to testify their respect for his merits as a magistrate by joining in the solemnity. But, his will being opened, it was found that after expressing a wish that he should be buried in Westminster Abbey, modestly giving as a reason "the attachment he felt for the place of his early education," he expressly directed that his funeral should only be attended by his relations and private friends. Accordingly his remains were deposited in Westminster Abbey in the same grave with those of his deceased wife, between the tombs of Lord Chatham and Lord Robert Manners:¹ and there a splendid monument

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XL.

His
funeral.

1. Lord Robert Manners (1758-1782), captain in the navy, born Feb. 6, 1758, was the second son of John Manners, Marquis of Granby and grandson of John, third Duke of Rutland. On May 13, 1778, he was promoted to be lieutenant of the Ocean, in which he was present in the action off Ushant on July 27. On Sept. 17 he was moved into the Victory, flagship of Admiral Keppel, and on July 15, 1779, into the Alcide, one of the ships which went out to Gibraltar with Rodney and defeated the Spanish squadron off Cape St. Vincent. On Dec. 8, 1779, Lord Sandwich had written of Lord Robert to Rodney: "There is another young man of fashion now in your squadron concerning whom I am tormented to death. I cannot do anything for him at home; therefore, if you could contrive while he remains with you, by some means or other, to give him rank, you will infinitely oblige me." (Mundy, "Life of Rodney," i. 207.) Rodney accordingly took the first opportunity, Jan. 17, 1780, to promote Manners to be captain of the Resolution, under Sir Challoner Ogle (d. 1816), whom he constituted a commodore. The Resolution returned to England with Rear-admiral Robert Digby, and was shortly afterwards sent out to America with Rear-admiral Thomas (after-

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was erected to his memory, the workmanship of Flaxman,¹—the expense being defrayed by a legacy of

wards Lord) Graves. When Rodney, after his visit to the coast of North America in the summer of 1780, returned to the West Indies, he took the *Resolution* with him, shortly after which Ogle, having been promoted to be rear-admiral, went home, leaving Manners in command of the ship. The whole business is a curious illustration of the crooked policy of the then First Lord of the Admiralty. In the following year the *Resolution* went north with Sir Samuel (afterwards Lord) Hood, and took part in the action off Cape Henry on Sept. 5. She was afterwards with Hood at St. Kitts in January, 1782, and in the battle of Dominica, April 12, 1782, was in the centre of the line, the third ship astern of the *Formidable*. In the action Manners received several severe wounds, in addition to having one leg shot off. From the strength of his constitution hopes were entertained of his recovery. He was put on board the *Andromache* frigate for a passage to England, but some days later lockjaw set in, and terminated fatally. (Blane, "Observations on the Diseases incident to Seamen," p. 479.) He is described as a young man of great gallantry and promise. His portrait by Reynolds has been engraved.—*Dict. Nat. Biog.*

1. John Flaxman, the celebrated English sculptor, was born at York, July 6, 1755, but he settled early in London with his father, who sold plaster casts, &c. The occupation of the father gave Flaxman many opportunities which he might otherwise not have had, and as early as his twelfth year he gained the silver pallet of the Society of Arts for a model. Among his earlier efforts were the various designs which he made for Wedgwood, which had a great share in elevating the general taste of the country, and which now promise a second time to exercise a beneficial influence upon it. In 1782 Flaxman married, and in 1787 took his wife with him to Italy, where he remained at Rome for seven years. During this time he executed his admirable designs in outline from Homer, Æschylus, and Dante, and his great group in marble, for Lord Bristol, of "The Fury of Athamas," and "Cephalus and Aurora" for Mr. Hope.—He returned to London in 1794, where his first work was the monument to Lord Mansfield in Westminster Abbey; this was followed by several others there and in St. Paul's, as that to Lord Nelson, the figure of Sir Joshua Reynolds, and others. He executed also many private monuments, of which that to the family of Sir Francis Baring in Micheldever Church is one of the most celebrated. He produced also some works of a more purely poetic character, as the colossal group of Satan and the archangel Michael for Lord Egremont, the original model of which, with a great number of others, is now placed in a permanent gallery beneath the dome of University College, London, the munificent gift of Miss Denman, the sculptor's sister-in-law. The "Shield of Achilles," modelled for Messrs. Rundell and Bridge, is a remarkable work of another class, and completing the whole category of art to which sculpture is applicable:—

1500*l.* gratefully bequeathed for this purpose by a client for whom, when at the bar, by an extraordinary display of his eloquence, he had recovered a great estate.

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His will, dated the 17th of April, 1782, all in his own handwriting, thus piously began: "Whenever it shall please Almighty God to call me to that state to which, of all I now enjoy, I can carry only the satisfaction of my own conscience and a full reliance upon his mercy through Jesus Christ."—He then goes on in very plain, clear, and untechnical language to make provision for those depending upon him, to leave legacies to friends, and to bequeath the rest of his property to his nephew Lord Stormont; thus concluding, with good sense and good feeling: "Those who are dearest and nearest to me best know how to manage and improve, and ultimately in their turn to divide and subdivide, the good things of this world which I commit to their care, according to events and contingencies which it is impossible for me to foresee, or trace through all the mazy labyrinths of time and chance."

Lord Mansfield must, I think, be considered the most prominent legal character, and the brightest ornament to the profession of the law, that appeared in England during the last century. As an advocate he did not display the impassioned eloquence of Erskine,

His position among the lawyers of the eighteenth century.

showing Flaxman working for the social refinement of the potter and the silversmith, for national glory, and domestic piety and affection, for the classic taste of the scholar, and the exquisite sentiment of the poet; in all skilful and great.—He was elected an academican in 1800, and professor of sculpture in 1810: he died Dec. 7, 1826, in his seventy-second year. His "Lectures on Sculpture" are published in one volume, octavo, with fifty-two plates, second edition, Bohn, 1838; they are—1. *English Sculpture*; 2. *Egyptian Sculpture*; 3. *Grecian Sculpture*; 4. *Science*; 5. *Beauty*; 6. *Composition*; 7. *Style*; 8. *Drapery*; 9. *Ancient Art*; and 10. *Modern Art*. These lectures, though his remarks on ancient art want the exactness and precision of modern scholarship, are compositions of great interest, and much practical instruction.—*Cycl. Univ. Biog.*

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but he was for many years the first man at the bar among powerful competitors. Both before a jury in the Common Law courts, and addressing a single judge in the courts of Equity, by the calm exertion of reason he won every cause in which *right* was with him, or which was doubtful. There was a common saying in those days, "Mr. Murray's *statement* is of itself worth the argument of any other man." Avoiding the vulgar fault of misrepresenting and exaggerating facts, he placed them in a point of view so perspicuous and so favorable to his client, that the verdict was secure before the narrative was closed. The observations which followed seemed to suggest trains of thinking rather than to draw conclusions; and so skilfully did he conceal his art, that the hearers thought they formed their opinion in consequence of the workings of their own minds, when in truth it was the effect of the most refined dialectics. For parliamentary oratory he was more considerable than any lawyer our profession could boast of till the appearance of Henry Brougham,¹—having been for many

1. Henry Brougham, Baron Brougham and Vaux, Lord Chancellor of England, born in Edinburgh, 1779, died in Cannes, France, 1868. He was descended from an ancient Westmoreland family, and was through his mother the grand-nephew of William Robertson, the historian. He was called to the bar at Lincoln's Inn in 1808, and chose the common-law courts and the northern circuit. In 1810 he entered parliament as member for Camelford. One of his first steps was to introduce a resolution requesting the King to take decisive measures for the suppression of the slave trade. During the next two years he spoke in favor of Roman Catholic emancipation and of reform in the government of India, and in condemnation of flogging in the army. He had previously acquired great popularity by opposing the "British orders in council," and in 1812 was efficient in procuring their repeal. He commenced his efforts in the cause of popular education in 1816 by obtaining the appointment of a committee to inquire into the state of the education of the poor in the metropolis. In 1818 he succeeded in getting a commission appointed to inquire into the abuses of the public charitable foundations of the kingdom connected with education, which resulted in the nomination of a permanent commission to supervise the admin-

years in both Houses in the very first rank of debaters. Lord Somers entered parliament late in life, and could not speak without long preparation. Lord Cowper was much more ready ; but he had not had the benefit of an academical education, and his political information was rather limited. Lord Harcourt¹ hardly aspired to rise above the level of the Tory squires by whom he was surrounded. Lord Macclesfield was unpolished, though forcible ; and Lord King was dull and tiresome. Lord Hardwicke had very moderate success in the House of Commons, and his weight in the House of Lords arose rather from his high judicial reputation than from his eloquence. Lord Camden's set speeches in the House of Lords were admirable ;— but he had been found quite unequal to the noise and irregulari-

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stration of such charities. Between 1825 and 1830 he spoke frequently in parliament on law reform, Catholic relief, colonial slavery, and the corporation and test acts. On the formation of the ministry of Earl Grey he became Lord Chancellor, with the title of Baron Brougham and Vaux (1830). In his judicial capacity he was noted for the rapidity of his decisions, which nevertheless were generally accurate. The dismissal of the Whig ministry in November, 1834, put an end to his chancellorship and his official life. As an orator Lord Brougham was in his time second only to Canning.—*Beeton's Biog. Dict.*

1. Lord Simon Harcourt (*b.* 1660, *d.* 1727) was called to the bar in 1683. He was elected member for Abingdon in the first parliament of William III. He was a strong opponent of the Revolution Settlement and of the attainder of Sir John Fenwick ; and in 1701 conducted the impeachment of Lord Somers for his share in the Partition Treaty. Next year he became Solicitor General and Attorney General, and in this capacity conducted the prosecution of Daniel Defoe (1703) ; but his legal abilities were better employed in framing the bill for the Scotch Union. He followed Harley out of office in 1708 ; and his able defence of Sacheverell, two years later, resulted in the acquittal of that divine. When the Tories came into power in 1710, he was appointed lord keeper of the privy seal. In the quarrel between Oxford and Bolingbroke he sided with the latter statesman. On the accession of George I., Lord Harcourt was deprived of office, and was succeeded by Lord Cowper. In 1715 he contrived to defeat the impeachment of Oxford by fomenting a quarrel between the two Houses. [*Harley.*] In 1721 he became a convert to Whig principles and was sworn of the privy council, and supported the government.—*Dict. of Eng. Hist.*

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ties of the House of Commons. Dunning, amidst all this turbulence, was in his element, and was listened to almost as well as Charles Fox himself; — but he could not bear the stillness of the Upper House, and there he fell into insignificance. Even Lord Plunkett¹ caused disappointment when he spoke in the House of Lords, after having been acknowledged in the House of Commons to be superior to Peel or to Canning. Neither in

1. William Conyngham Plunkett, Lord Plunkett, the son of a Unitarian minister at Enniskillen, was born there July, 1764; received his academical education at Trinity College, Dublin; was called to the Irish bar 1787, and became a King's counsel 1798. When the rebellion broke out, he gave professional aid to the patriots, and was publicly accused of being associated in their proceedings. This charge he vehemently denied in 1803, on the trial of Emmett, whom he prosecuted on behalf of the Crown. Mr. Plunkett certainly discharged his duty on that painful trial in a manner more remarkable for zeal in his cause than for humane consideration towards the culprit. He had entered the Irish parliament, 1798, as member for Claremont. His speeches in the debates on the union with England raised him to the first rank of his party, and they also greatly increased his practice at the bar. In October, 1803, Mr. Plunkett was advanced to the office of Solicitor General for Ireland, and in October, 1805, to that of Attorney General, which position he held till 1807. During a portion of the latter year he sat in the British House of Commons for Midhurst. Mr. Plunkett now gave himself up to the practice of his profession at the Irish bar. In every chancery suit he appeared as leading counsel, and continued in the undisputed enjoyment of that position from 1807 to 1827, in the course of which period his fees, exclusive of professional gains during the preceding twenty years, could not have amounted to less than an average income of 600*l.* per annum. In 1812 he took his seat in the British House of Commons as representative for Dublin University. He was a zealous supporter of Catholic emancipation, and indeed Mr. Canning afterwards remarked that no individual whatever had contributed so much as Mr. Plunkett had done to the success of the Catholic claims. In 1822 he was again appointed Attorney General for Ireland. In 1827, on the recommendation of Mr. Canning, he was raised to the peerage of the United Kingdom, by the title of Baron Plunkett, being at the same time appointed Chief Justice of the Common Pleas in Ireland, which office he held till 1830. During the passing of the famous Catholic Relief Bill through the House of Peers, Lord Plunkett, by the invitation of the Duke of Wellington, sat beside him on the treasury bench, and took charge of the measure. He was appointed Lord Chancellor of Ireland 1830, and held the office, except for a brief interval, till 1841, when he retired into private life. Died January 5, 1854.—*Cooper's Biog. Dict.*



SIR CHAS. ABBOTT, LORD TENTERDEN.

the one House nor in the other did Erskine ever do anything at all commensurate to his forensic reputation. Thurlow prevailed more by the shagginess of his eyebrows and the loudness of his vociferation, than by his sentiments or his expressions; and the effect of Wedderburn's oratory, which was far more artistic, was ruined by his character for insincerity. When Lord Eldon had broken down in an attempt he made in the House of Commons to be humorous, he never aimed at any thing beyond the pitch of an Equity pleader; and Lord Redesdale's speeches in parliament would have been reckoned dull even in the Court of Chancery. Of Lord Mansfield's three successors, Lord Kenyon, Lord Ellenborough, and Lord Tenterden, the first affected a knowledge of nothing beyond law, except a few Latin quotations which he constantly misapplied; — the second, though a scholar, and a ripe and good one, was only a few months in the House of Commons, during which he did nothing beyond bringing in a law bill; and in the House of Lords he rather alarmed the Peers by violent ebullitions of indignation, than charmed or convinced them by polished reasoning; — the last, having devoted all his best years to the drawing of special pleas, never was a member of the House of Commons, and the few times that he addressed the Lords he seemed to be opening to the jury the issues joined on some very complicated record. But when Murray was in the House of Commons, the existence of administrations depended upon his giving or withholding from them the aid of his eloquence, and in the House of Lords he was listened to with increased respect and deference. The combination of this excellence with his other performances is certainly much to be wondered at; for, while his competitors were preparing for the approaching conflict by conning over the works of orators and poets, he was obliged to

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devote himself to the YEAR-BOOKS,¹ and to fill his mind with the subtleties of contingent remainders and executory devises. Who is there that could have argued

1. The oldest reports extant on the English law are the Year Books, which consist of eleven parts or volumes, written in law French, and extend from the beginning of the reign of Edward II. to the latter end of the reign of Henry VIII., a period of about two hundred years. There are a few broken cases, which may be gleaned from the old abridgments, and particularly from Fitzherbert, which go back to the reign of Henry III. The Year Books were first printed in the reign of James I., and were again printed by subscription in 1679; but they have never been translated, and they are not worth the labor and expense either of a new edition or a translation. The substance of the Year Books was afterwards included in the great abridgments of Statham, Fitzherbert, and Brooke, and those compilations superseded, in a considerable degree, the use of them. The Year Books were very much occupied with discussions touching the forms of writs, and the pleadings and practice in real actions, which have gone entirely out of use. In a late case in the Common Bench the judges spoke with some sharpness of reproof against going back to the Year Books in search of a precedent in the case of levying a fine. (2 Taunt. 201.) The great authenticity and accuracy of the Year Books arose from the manner in which they were composed. There were four reporters appointed to that duty, and they had a yearly stipend from the Crown, and they used to confer together, and the reports, being settled by so many persons of approved diligence and learning, deservedly carried great credit with them. (Preface to Plowden's Reports.) But so great have been the changes since the feudal ages, in the character of property, the business of civil life, and the practice of the courts, that the mass of curious learning and technical questions contained in the Year Books have sunk into oblivion; and it will be no cause of regret if that learning be destined never to be reclaimed. The Year Books have now become nearly obsolete, and they are valuable only to the antiquary and historian as a faithful portrait of ancient customs and manners. (In 1 Barn. and Cess. 410 the Court of King's Bench decided a case chiefly upon the authority of a citation from the Year Book of 42 Edw. III., but such a reference is rare.) The Year Books ended in the reign of Henry VIII., because persons were no longer appointed to the task of reporting, with the allowance of a fixed salary. Private lawyers then undertook the business of reporting for their own use, or for the purpose of publication. (1 Kent's Com. 480, 481.) Year Books of 20 and 21, 30 and 31, 32 and 33 Edward I. have now been published, with a translation, under the direction of the Master of the Rolls. Earlier still is the Placitorum Abbreviatio, which goes back to the reign of Richard I. The case of Battle Abbey, which was heard before Henry II., with many of his magnates, including the Chancellor Thomas à Becket, will be found in 2 Palgrave's Eng. Comm. xxviii.-lxiv. Vide *ibid.* lxxv., lxxiii.

against Mr. Justice Blackstone in the morning concerning the application of the rule in *Shelley's Case*, and in the evening shown himself equal to Lord Chatham on the question of the right of the British Parliament to tax America, or the policy of declaring war against Spain?¹

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Nothing remains to be said for the purpose of proving that he was the first of Common Law judges. Looking to the state of the Court of King's Bench in his time, it is impossible not to envy the good fortune of those who practised under him. The most timid were encouraged by his courtesy, and the boldest were awed by his authority. From his quickness, repetition and prolixity were inexcusable; and there was no temptation to make bad points, as sophistry was sure to be detected, and sound reasoning was sure to prevail. When the facts were ascertained, the decision might be with confidence anticipated; and the experienced advocate knew when to sit down, his cause being either secure or hopeless. The consequence was, that business was done not only with certainty, but celerity; and men making many thousands a year had some leisure both for recreation and elegant literature.²

Felicity of
the life of a
lawyer
practising
under him.

1. Soon after his death, the following tribute was paid to his powers as an orator, by one who had often listened to him: "As a speaker in the House of Lords, where was his competitor? The grace of his action, and the fire and vivacity of his looks, are still present to imagination; and the harmony of his voice yet vibrates in the ear of those who have been accustomed to listen to him. His Lordship possessed the strongest powers of discrimination; his language was elegant and perspicuous, arranged with the happiest method, and applied with the utmost extent of human ingenuity; his images were often bold, and always just; but the character of his eloquence is that of being flowing, perspicuous, convincing, and affecting."—*Burton's Character of Classical Remains*.

2. I have been told by Lord Erskine,—“In Lord Mansfield's time, although the King's Bench monopolized all the common-law business, the Court often rose at one or two o'clock,—the *papers*, special, crown, and peremptory, being cleared; and then I refreshed myself by a drive to my villa at Hampstead.”

CHAP. XL. We need not wonder that, being prosperous and happy under him, they were eager to pay him homage, and that they exulted in his paternal sway. We may form a notion of the love and respect with which he was regarded from the following appeal to him, when we know that the speaker was Erskine, the most fearless and independent of men, addressing him in the case of the Dean of St. Asaph :

"I am one of those," said he, "who could almost lull myself by these reflections from the apprehension of *immediate* mischief, even from the law of libel laid down by your Lordship, if you were always to continue to administer it yourself. I should feel a protection in the gentleness of your character ; in the love of justice which its own intrinsic excellence forces upon a mind enlightened by science, and enlarged by liberal education ; and in that dignity of disposition, which grows with the growth of an illustrious reputation, and becomes a sort of pledge to the public for security. But such a security is a shadow which passeth away. You cannot, my Lord, be immortal, and how can you answer for your successor ? If you maintain the doctrines which I seek to overturn, you render yourself responsible for all the abuses that may follow from them to our latest posterity."¹

There was no grumbling against him except by long-winded orators, who complained that during their impassioned replies he sometimes read a newspaper ; but he never did so till the evidence was closed and he was complete master of the case. He would then, by looking at the DAILY ADVERTISER, give a hint that the public time was wasted by the counsel. Never, from indulging his curiosity about political events, did he make a remark which showed that he was not aware of the real question to be tried, nor afford any encouragement to move for a new trial by inadvertences into which he had fallen.

1. Erskine's Speeches, i. 261.

The absurd cry that he knew no law, gained countenance only from the envy of the vulgar, who are always eager to pull down those who soar above them to their own level, and, in our profession, will insist that if a man is celebrated for elegant accomplishments he can have no law, and if he is distinguished as a deep lawyer that he can have no elegant accomplishments:

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Solution
of the
charge
that he
knew no
law.

"The Temple late two brother-serjeants saw,
Who deem'd each other oracles of law :
With equal talents these congenial souls,
One lull'd the Exchequer, and one stunn'd the Rolls ;
Each had a gravity would make you split,
And shook his head at MURRAY as a wit."¹

I cannot adopt Dr. Johnson's refutation of the charge,—“As to Lord Mansfield's not knowing law, you may as well say that a coachman who has driven a stage several times a day for twenty years between London and Brentford does not know the road,”—for no experience in practice, without a proper foundation by long study, will make a good lawyer ; but in this instance we have before our eyes stupendous proofs of juridical knowledge, and the best answer is CIRCUMSPICE.

It has been said reproachfully, that, although he was a member of the legislature for half a century, we have no “Lord Mansfield's Act.” Yet when our CIVIL CODE shall be compiled, a large portion of it, and one of the best, will be referred to his decisions. The observation has been truly made, that “he has done more for the jurisprudence of this country, than any legislator or judge or author who has ever made the improvement of it his object.”²

Unless Cowper's suggestion, that the manuscripts of original works from his pen were burnt in the riots

1. “Frater erat Romæ consulti rhetor ; ut alter
Alterius sermone meros audiret honores,” &c.

2. Welsby, 448.

CHAP. of 1780, be true, he never wrote anything for the press.
XL. He was master, however, of a correct classical English style,—a very rare accomplishment among his professional contemporaries.¹

Sermon
written by
him and
preached
by a
bishop.

We have a curious specimen of this in a sermon which he wrote for his friend and *protégé* Bishop Johnson,² who was suddenly called upon to preach in Westminster Abbey on the 29th of November, 1759, being a day of thanksgiving appointed to be observed for the signal successes with which his Majesty's arms

1. Lord Chancellor Northington, his schoolfellow at Westminster, could not write grammatically. After Bacon, Mr. Justice Blackstone was the first practising lawyer at the English bar who, in writing, paid the slightest attention to the selection or collocation of words.

2. James Johnson (1705–1774), Bishop of Worcester, was born in 1705 at Melford in Suffolk, of which parish his father, James Johnson, was rector. In 1719 he was elected a King's scholar of Westminster School, becoming in 1724 a student at Christ Church, Oxford, where he graduated B.A. in 1728, M.A. 1731, B.D. and D.D. June 1, 1732. In 1733 he was appointed second master of Westminster School, and on June 14, 1743, was instituted to the rectory of Berkhamstead, Hertfordshire, which benefice he continued to hold until he became Bishop of Worcester. In 1748 Johnson resigned his mastership on being appointed (mainly through the instrumentality of his old schoolfellow the Duke of Newcastle) one of the King's chaplains in ordinary, and soon afterwards accompanied George II. to Hanover. During the course of the same year he was nominated a canon residentiary of St. Paul's. He accompanied the King a second time to Hanover in 1752, and on his return to England in the same year it was in contemplation to appoint him preceptor to the Prince of Wales, but the opposition of the Whigs was too violent to permit the arrangement to be carried out. He was elevated to the see of Gloucester on Oct. 18, 1752. . . . In 1759 Johnson was translated to Worcester, and during his tenure of that see made considerable improvements and embellishments in Hartlebury Castle, the ancient country palace of the diocese, in addition to laying out the sum of 5000*l.* on the episcopal residence in Worcester. To the ecclesiastical patronage of the see he added the rectory of Ricard's Castle in the diocese of Hereford. He died at Bath on Nov. 28, 1774, in consequence of a fall from his horse, and was interred among his ancestors at Laycock in Wiltshire. A monument designed by Nollekens was shortly afterwards erected to his memory in Worcester Cathedral. Johnson's amiability was unvarying. His private wealth was large. He was very hospitable, and especially generous to his relatives. He published four sermons separately.—*Dict. Nat. Biog.*

had been blessed. A vote of thanks was passed by the Lords spiritual and temporal to the preacher for *his excellent discourse*, and he was ordered to "cause the same to be forthwith printed and published."¹ It accordingly was given to the world as the composition of "James, by Divine Providence Lord Bishop of Worcester." The most remarkable feature in it is its inculcation of "good revolution principles"; showing a great change of sentiment since the times when the Chief Justice and the Bishop, supping at Mr. Vernon's, the Jacobite mercer in Cheapside, drank the Pretender's health upon their knees.² The sermon,—which is from

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1. Lords' Journals, Dec. 3, 1759.

2. "I will now set down in writing the exact truth of this strange, important trifle.

"Mr. Fosset, Messrs. Murray and Stone, were much acquainted, if not schoolfellows, in early life. Their fortune led them different ways: Fosset's was to be a country lawyer and Recorder of Newcastle. Johnson, now Bishop of Gloucester, was one of their associates. On the day the King's birthday was kept, they dined at the Dean of Durham's, at Durham, this Fosset, Lord Ravensworth, Major Davison, and one or two more, who retired after dinner into another room: the conversation turning upon the late Bishop of Gloucester's preferments, it was asked who was to have his prebend of Durham: the dean said, that the last news from London was that Dr. Johnson was to have it: Fosset said, he was glad that Johnson got off so well, for he remembered him a Jacobite several years ago, and that he used to be with a relation of his who was very disaffected, one Vernon, a mercer, where the Pretender's health was frequently drunk. This, passing among a few familiar acquaintance, was thought no more of at the time: it spread, however, so much in the north (how, I never heard accounted for) and reached Town in such a manner, that Mr. Pelham thought it necessary to desire Mr. Vane, who was a friend to Fosset, and who employed him in his business, to write to Fosset, to know if he had said this to Johnson, and if he had, if it was true. This letter was written on the 9th of January; it came to Newcastle the Friday following. Fosset was much surprised, but the post going out a few hours after its arrival, he immediately acknowledged the letter by a long but not very explicit answer. This Friday happened to be the club-day of the neighboring gentlemen at Newcastle. As soon as Lord Ravensworth, who was a patron and employer of Fosset, came into the town, Fosset acquainted him with the extraordinary letter he had received: he told him, that he had already answered it, and being asked to show the copy, said he kept none; but desired

CHAP. the text "*Blessed be the name of God for ever and ever,*
XL. *for wisdom and might are His,*"¹—after dwelling upon the special interpositions of Providence in favor of this nation, particularly in dispersing the Spanish Armada, thus proceeds:

"The same Providence, propitious to the liberties and the happy constitution of this country, in the next century gave a prosperous course to a fleet set out for the deliverance of this kingdom from arbitrary power, superstition, and slavery."

It afterwards follows up a penegyric on the virtues of George II. with the following prayer:

"May that God whose providence he devoutly adores in these his dispensations, give him a farther increase of glory and happiness by fresh advantages over his enemies; and, in His own good time, crown these important successes in war, and complete his happiness by making him the instrument of securing and establishing to us the solid and substantial blessings of peace! *And may the happiness we enjoy by his government be perpetuated to us under his family to the latest posterity!*"²

There is no equivocal here like "*the KING over the water.*" But I doubt not that both the Bishop and the

Lord Ravensworth to recollect, if he held such a conversation at the deanery of Durham, the day appointed for the birthday. Ravensworth recollected nothing at all of it. They went to the club together, and Ravensworth went the next morning to see his mother in the neighborhood, with whom he stayed till Monday; but this thing, of such consequence, lying upon his thoughts, he returned by Newcastle. He and Fosset had another conversation, and in endeavoring to refresh each other's memory about this dreadful delinquency of Johnson, Fosset said, he could not recollect positively, at such a distance of time, whether Johnson drank those healths, or had been present at the drinking them, but that Murray and Stone had done both, several times. Ravensworth was excessively alarmed at this, with relation to Stone, on account of his office about the prince; and thus the affair of Johnson was quite forgotten, and the episode became the principal part. There were many more conferences between Ravensworth and Fosset, upon this subject, in which the latter always persisted, that Stone and Murray were present at the drinking and did drink those healths. It may be observed here, that, when he was examined upon oath, he swore to the years 1731 or 1732 at latest."—*Dodington's Diary*. See also this volume, ante, page 53.

1. Dan. ii. 20.

2. Holl. 488, 491, 497.

Judge were now sincere, and that, the cause of the Stuarts being hopeless, they exulted in the prospects which the country had on the accession of a young prince into whose mind they had assisted to instil the doctrine of the divine right of kings, together with a horror of that religion which had proved the ruin of the exiled family.

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Lord Mansfield appeared nowhere to greater advantage than in the social circle. He did not make a display of condescension like a low-bred man, who, accidentally reaching an elevated position, wishes kindly to notice his former associates. He did not imitate those who, by the joint exertion of a great memory and a loud voice, quite unconscious of doing anything amiss, put an end to conversation by a perpetual pouring forth of observations and quotations which may be useful in an encyclopædia, but which are tiresome in a lecture. He always comported himself like a well-bred gentleman among his equals. He considered that men are to gain renown in the field of battle, in the forum, and in the senate, but that society is for relaxation ; and, instead of making people despise themselves and hate him by the overwhelming proof of superior powers and acquirements, he studied to render others dearer to themselves, and consequently to inspire into them a benevolent feeling towards himself, by giving them an opportunity of contributing to the general amusement, and of bringing out the information which they peculiarly possessed. His general rule was, to reward every man's jest with a smile, although he could not conceal his dislike to a bore or a coxcomb. According to the account of one who had been intimately acquainted with him for many years, " He was always as ready to hear as he was to deliver an opinion. The facility of conversing with ease and propriety he retained to the very last, and he was as quick at reply in his latter years

His de-
meanor
in society.

CHAP. XL. as at any period of his life : whether he supported his own arguments or refuted those of his adversary, his observations were delivered with that judgment and grace which evinced the precision of a scholar and the elegance of a gentleman."¹

His
facetiae.

Although he had too much taste systematically to aim at jocularity, there are *facetiae* of his which still enliven the traditions of Westminster Hall.—An old Jew, who was dressed in a tawdry suit of clothes covered with gold lace, justifying as bail before him in an action brought to recover a debt of small amount, having sworn that he was worth double the sum, and having enumerated property belonging to him of much greater value, was still examined and cross-examined, and teased and badgered, by Serjeant Davey,²—till at

1. See Holliday, 475. The following description of his conversational powers is by Richard Cumberland: "I cannot recollect the time when, sitting at the table with Lord Mansfield, I ever failed to remark that happy and engaging art which he possessed of putting the company present in good humor with themselves; I am convinced they naturally liked him the more for his seeming to like them so well. This has not been the general property of all the witty, great, and learned men whom I have looked up to in my course of life. He would lend his ear most condescendingly to his company, and cheer the least attempt at humor with the prompt payment of a species of laugh; which cost his muscles no exertion, but was merely a subscription that he readily threw in towards the general hilarity of the table. He would take his share in the small talk of the ladies with all imaginable affability; he was in fact, like most men, not in the least degree displeased at being incensed by their flattery."—*Mem.* ii. 344.

"That his manners," says Lord Brougham, "were polished and winning, can easily be believed from the impression his public appearances uniformly made. But when to these were added his great and varied knowledge, chiefly of a kind available to the uses of society, his cheerful spirits and mild temper, his love of harmless pleasantry, and his power of contributing towards it by a refined and classical wit, it is not difficult to understand what the reports mean which unite in describing him as fascinating beyond almost all other men of his time."—*Statesmen*, i. 121, 122.

2. William Davy (*d.* 1780), lawyer, is said to have been originally a druggist or grocer at Exeter, and, having failed in business and made acquaintance with the King's Bench prison, to have turned his attention to law. He entered the Middle Temple in 1741. He went

last the Chief Justice exclaimed, "For shame, brother Davey! don't you see that he would *burn* for the money?"

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XL.

Trying a prisoner at the Old Bailey on a charge of stealing in a dwelling-house to the value of forty shillings, when this was a capital offence,—he advised the jury to find a gold trinket, the subject of the indictment, to be of less value. The prosecutor exclaimed, with indignation, "Under forty shillings, my Lord! Why the *fashion*, alone, cost me more than double the western circuit. His first cases of importance occurred in January, 1753, when he defended a forger, who was found guilty, confessed, and was executed at Tyburn, and in the same year was engaged in the famous case of Elizabeth Canning. Davy defended Squires and afterwards conducted the prosecution of Canning. Davy was advanced to the rank of serjeant at law on February 11, 1754. He defended in 1755 four ruffians who were indicted for compassing the commission of a highway robbery upon one of themselves by two other ruffians, whom they subsequently prosecuted to conviction in order to obtain the customary reward. Davy remarked before opening his defence that, had he not been appointed by the court, he "could not have been prevailed upon to have been counsel for such a set of rogues." * * * He died after a few days' illness, at Hammersmith on December 13, 1780. Davy's reputation for knowledge did not stand high, but he was an acknowledged master of the art of cross-examination. He was also something of a humorist, and one or two of his anecdotes are preserved. Lord Mansfield is said once to have interrupted him in his argument with: "If this be law, I must burn all my books, I see," which elicited from Davy the retort, "Your lordship had better read them first." A gentleman whom he had offended made his way into Davy's bedroom before he was out of bed and demanded satisfaction. Davy remonstrated, "Surely you would not fall upon me unarmed, naked, and in bed." On the other disclaiming any such intention, Davy replied, "In that case I will pledge you my honor not to get up until you are out of the neighborhood." On another occasion Lord Mansfield, having suggested the expediency of transacting judicial business on Good Friday, abandoned the idea on Davy reminding him that no judge had done so since Pontius Pilate. Having once received a very large brief indorsed with a very small fee, and being asked by his client if he had read it, he pointed to the indorsement, observing, "So far as that I have read, and for the life of me I can read no farther." Being reproached with disgracing the profession by taking silver, he replied, "I took silver because I could not get gold, but I took every farthing the fellow had in the world, and hope you don't call that disgracing the profession."

—*Dict. Nat. Biog.*

CHAP. XL. sum." Lord Mansfield calmly observed, "God forbid, gentlemen, we should hang a man for *fashion's sake*!"

An indictment was tried before him at the assizes, preferred by parish officers, for keeping an hospital for lying-in women, whereby the parish was burdened with bastards. At the opening of the case he expressed doubts whether this was an indictable offence, and, after hearing a long argument in support of it, he thus gave judgment: "We sit here under a commission requiring us to *deliver* this jail, and no statute has been cited to make it unlawful to *deliver a woman who is with child*. Let the indictment be quashed."

Macklin,¹ against whom he might be supposed to entertain some spite for libelling his countrymen under the names of *Sir Archy Macsarcasm* and *Sir Pertinax Macsycophant*, recovered a verdict, with 700*l.* damages, in an action tried in the King's Bench for a conspiracy to hiss him off the stage. After the verdict was pronounced, the magnanimous player said, "My Lord, my only object was to vindicate, before the public, my own character and the rights of my profession; and, having done so, I waive the damages awarded to me." *Lord Mansfield*: "Mr. Macklin, I have many times witnessed your performance with great delight; but, in my opinion, you never *acted* so finely as in the last scene of this piece."

1. Charles Macklin, a dramatic author and actor, born in Ireland May 1, 1690. His family name was Maclaughlin, which, on his arrival in London, he changed to Macklin. He was originally in a menial situation in Trinity College, Dublin; and in 1716 he appeared as a performer at the theatre in Lincoln's Inn Fields. It was not, however, till 1741 that he established his reputation in the character of Shylock, in which he stood unrivalled. He continued on the stage till 1789, when the infirmities of old age compelled him to retire, in such poor circumstances as induced his friends to open a subscription for his support. Died July 11, 1797. Macklin wrote two comedies, entitled "The Man of the World" and "Love Alamode."—*Cooper's Biog. Dict.*

Having met at supper the famous physician, Dr. Brocklesby,¹ he entered into familiar conversation with him, and interchanged some stories a little trenching on decorum. It so happened that the Doctor had to appear next morning before Lord Mansfield, in the witness-box; when, on the strength of last night's doings, the witness nodded, with offensive familiarity, to the Chief Justice, as to a boon companion. His Lordship, taking no notice of his salutation, but writing down his evidence, when he came to summing it up to the jury, thus proceeded: "The next witness is one *Rocklesby* or *Brocklesby*, *Brocklesby* or *Rocklesby*,—I am not sure which,—and, first, *he swears that he is a physician.*"

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XL.

Trying an action which arose from the collision of two ships at sea, a sailor, who gave an account of the accident, said, "At the time, I was standing abaft the binnacle." Lord Mansfield asked "where is abaft the binnacle?" upon which the witness, who had taken a large share of grog before coming into court, exclaimed, loud enough to be heard by all present, "A pretty fellow to be a judge, who does not know where abaft the binnacle is!" Lord Mansfield, instead of threatening to commit him for his contempt, said, "Well, my friend, fit me for my office by telling me where *abaft the binnacle* is; you have already shown me the meaning of *half seas over.*"

Lord Chief Baron Parker,² in his 87th year, having

1. Richard Brocklesby, a distinguished English physician, born in Somersetshire in 1722, was an intimate friend of Edmund Burke. He graduated at Leyden, and in 1758 was appointed physician to the army, which he accompanied to Germany in the Seven Years' War. He was a Fellow of the Royal Society and of the College of Physicians, and published several medical works. Died in 1797.—*Thomas's Biog. Dict.*

2. Sir Thomas Parker was a near relation of his namesake Lord Chancellor Macclesfield, George Parker of Park Hall in Staffordshire, high sheriff of that county in the reign of Charles I., being

CHAP. XL. observed to Lord Mansfield, in his 78th, "Your Lordship and myself are now at *sevens* and *eights*," the

the grandfather of the Chancellor, and the great-grandfather of Sir Thomas, whose father, George, succeeded to the estate of Park Hall. Besides Sir Thomas he had a daughter, who married Swynfen Jervis of Meaford in the same county, and was the mother of the famous admiral, created Earl St. Vincent. Thomas Parker was born about the year 1695, and received his education at the grammar school of Lichfield, from whence he was removed to the office of Mr. Salkeld, a solicitor in Brook Street, Holborn, where three other eminent lawyers and judges were at nearly the same time initiated into the mysteries of the science. These were Lord Jocelyn, Lord Chancellor of Ireland, Sir John Strange, Master of the Rolls, and Lord Hardwicke, Lord Chancellor of England. With the latter he contracted a lasting intimacy, which was greatly increased by the encouragement given by his relative Lord Macclesfield to Lord Hardwicke in the early part of his career. Parker was five years Lord Hardwicke's junior and was not admitted to the Inner Temple till May, 1718, three years after Lord Hardwicke had been called to the bar. He was not himself called till June, 1724, Lord Hardwicke being at that time Attorney General. This was less than a year before his noble relative's disgrace, of whose patronage, though he was thus deprived, he found an ample compensation in the friendship of Lord Hardwicke, who never forgot what he owed to the persecuted peer, in gratitude to whom he took every opportunity of promoting Parker's advancement. Thus in June, 1736, when Parker had been a barrister only twelve years, he was raised to the dignity of the coif, and made King's serjeant at the same time; and in two years after, on July 7, 1738, he was raised to the bench as a baron of the Exchequer. From this court he was removed in April, 1740, to the Common Pleas, where he remained till November 29, 1742, when, having been previously knighted, he was advanced to the head of the Court of Exchequer as Lord Chief Baron. All these promotions he owed to the gratitude of Lord Hardwicke, which his lordship owned in a letter to the Duke of Somerset, at the same time adding that "Parker was in every way deserving, and has gained a very high character for ability and integrity since his advancement to the bench." That his previous reputation was not very high appears from the "*Causidicade*," a poem written shortly after his advancement. In it he is thus noted in connection with Lord Hardwicke:

"Besides the dunce P . . . r, at last made Ch . . . B . . . n,
Your fav'rite, my lord, indeed a most rare one;
A name once detested in the eye of the law,
But your lordship is grateful—no more—hem, haw."

And again in a subsequent couplet:

"But he who can bend
Like a reed or T . m P . . . r ne'er wants a good friend."

Lord Hardwicke, even when out of power, did not neglect him, but

younger Chief replied, "Would you have us be all our lives at *sixes* and *sevens*?—but let us talk of young ladies, and not of old age."

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After Parker had resigned, he continued to enjoy vigorous health; while Sir Sydney Stafford Smyth, who succeeded him, was often prevented, by infirmity, from attending in Court: upon which Lord Mansfield observed, "The new Chief Baron should resign in favor of his predecessor."

There was only one man at the bar to whom Lord Mansfield did not behave with perfect courtesy; and the temptation to *quiz* him was almost irresistible.

Jokes on
Serjeant
Hill.

endeavored on the death of Sir John Willes to procure for him the Chief Justiceship of the Common Pleas, and to the last showed his regard by naming him as a trustee under his will. Sir Thomas presided in the Exchequer for thirty years, when having arrived at the age of seventy-seven he resigned in the summer vacation 1772, being gratified with a pension of 2400*l.*, and being sworn a privy councillor, a post not then usually given to the Chief Barons while in office. He lived for twelve years after his retirement, during which he published a volume of "Reports of Revenue Cases in the Exchequer from 1743 to 1767," which displayed considerable acuteness. A judgment may also be formed of the manner in which he had executed his judicial functions by the remark of Lord Mansfield, who, on the frequent absence of his successor Sir Sidney Stafford Smyth from infirmity, observed: "The new Chief Baron should resign in favor of his predecessor." One of his decisions is thus noted in the "Pleader's Guide":

"Parker, Ch . . . B . . . , held that bruising,
Deem'd so delightful and amusing,
Is an illegal, dangerous science,
And practis'd in the law's defiance."

He died on December 29, 1784, and was buried in the family vault at Park Hall. He was twice married: first to Anne, daughter and coheir of James Whitehall of Pipe-Ridware in Staffordshire; and secondly to Martha, daughter and coheir of Edward Strong of Greenwich,—by each of whom he left issue. The estate of Park Hall is still in possession of his descendants. His daughter Martha became the wife of her cousin the Earl of St. Vincent, and the family connection was further kept up by the judge's granddaughter marrying the earl's successor, Viscount St. Vincent.—*Foss's Judges of England.*

CHAP. XL. This was Serjeant Hill,¹ a very deep black-letter lawyer, quite ignorant of the world, and so incapable of applying his learning that he acquired the nickname of *Serjeant Labyrinth*. In an argument which turned entirely on the meaning of an illiterate old woman's will, he cited innumerable cases from the YEAR-BOOKS downwards; till Lord Mansfield at last asked, "Do you think, brother Hill, that though these cases may occupy the attention of an old woman, *this* old woman ever read them? or that any old woman can understand them?"

On the trial of an ejectment, a deed being offered in evidence which purported to be an "*indenture*," but which, instead of having its parchment edge running *zig-zag* as usual, appeared to have been cut quite straight, Serjeant Hill, for the defendant, objected that it could not be received in evidence, because "the law says that such a conveyance of real property must be by *indenture*; and this instrument is not an

1. George Hill, serjeant at law, of an old Northamptonshire family, was born in 1716. He was admitted a member of Lincoln's Inn, and was called to the bar, practising at first as a conveyancer. He joined the midland circuit, and, although his practice was small, he soon gained a great reputation for exceptional knowledge of case law. Although he was a scholar and a mathematician of considerable learning and attainments, as a lawyer he was so overwhelmed by his memory for cases that he was unable to extract from them clear general principles, and earned for himself the nickname of *Serjeant Labyrinth*. On November 6, 1772, he became at once a serjeant and a King's serjeant. Of his absence of mind and abstraction among unpractical points of law many anecdotes are told (see Polson, "*Law and Lawyers*," i. 76; Twiss, "*Life of Lord Eldon*," i. 301, 325; Cradock, "*Memoirs*," i. 248, iv. 149; "*Memoirs of Letitia Matilda Hawkins*," i. 255; Campbell, "*Lives of the Chief Justices*," ii. 571). He died at his house in Bedford Square on February 21, 1808, and was buried in the family vault at Rothwell, Northamptonshire, where there is an epitaph upon him by Bennett, Bishop of Cloyne. He married Anna Barbara, daughter and heiress of Thomas Medlycote of Cottingham, Northamptonshire, by whom he had two daughters. His legal manuscripts were purchased of his executors by the Society of Lincoln's Inn, and are in the library there.—*Dict. Nat. Biog.*

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indenture, for there must be two parties to an indenture; therefore there are two parts of it, one to be executed by each party; the counterparts must be written on the same piece of parchment, and then cut in a waving line, so that, as a guard against forgery, they may fit in when applied to each other: the instrument is thus called an *indenture*, because it is *instar dentium*." He then fortified his argument by many *dicta* from the text-writers, and decisions from the YEAR-BOOKS. *Lord Mansfield*: "Brother Hill, hand me up the deed." Having applied it to his right eye, while he closed the left, and looked for some time along its edge, he thus pronounced judgment: "I am of opinion that this is not a straight mathematical line; therefore it is *instar dentium*, and comes within your own definition of an *indenture*. Let it be read in evidence."

The same Serjeant, who had very little respect for the law of any living judge, arguing a question about whether there was sufficient evidence to support an action of trespass for breaking a hole through a wall which separated the houses of the plaintiff and the defendant, Lord Mansfield suggested that, although the hole was proved to be there, and the defendant had used it, possibly it might long before have existed there. The Serjeant thereupon, in rather an impertinent manner, exclaimed, "I should like any real lawyer to tell me whether there be any authority in the books for such a presumption?" *Lord Mansfield*: "I rather think, brother Hill, that you will find the point mooted in the case of '*Pyramus and Thisbe*';¹ and, in the report of that case, if I remember right, it is said,—

1. 400 Mat. 55. Pyramus, a youth of Babylon, who became enamored of Thisbe, a beautiful virgin who dwelt in the neighborhood. The flame was mutual, and the two lovers, whom their parents forbade to marry, regularly received each other's addresses through the chink of a wall which separated their houses. After the most solemn vows of sincerity they both agreed to elude the vigilance of

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"Fissus erat tenui rima, quam duxerat olim,
Cum fieret, paries domui communis utrique.
Id vitium nulli per sæcula longa notatum."¹

Lord
Mansfield's
advice
to a gene-
ral about
to act as a
colonial
judge.

A general officer in the army, a friend of Lord Mansfield, came to him one day in great perplexity, saying that he had got the appointment of governor of a West India island; which made him very happy till he found that he was not only to be commander-in-chief, for which he thought himself not unfit, but that he was likewise required to sit as chancellor and to decide causes, whereas he was utterly ignorant of law and had never been in a court of justice in his life. Lord Mansfield said to him, "Be of good cheer—take my advice, and you will be reckoned a great judge as well as a great commander-in-chief. Nothing is more easy; only hear both sides patiently—then consider what you think justice requires, and decide accordingly. But never give your reasons;—for your judgment will probably be right, but your reasons will certainly be wrong." In telling the anecdote to his grand-nephew, the present

their friends, and to meet one another at the tomb of Ninus, under a white mulberry tree, without the walls of Babylon. Thisbe came first to the appointed place, but the sudden arrival of a lioness frightened her away; and as she fled into a neighboring cave she dropped her veil, which the lioness found and besmeared with blood. Pyramus soon arrived; he found Thisbe's veil all bloody, and, concluding that she had been torn to pieces by the wild beasts of the place, he stabbed himself with his sword. Thisbe, when her fears were vanished, returned from the cave, and at the sight of the dying Pyramus she fell upon the sword which still reeked with his blood.
—*Lempriere's Classical Dict.*

1. "The wall was broken by a narrow crack, through which they had exchanged vows, since it happened that this wall separated the two houses. *This defect had been noticed by no one for long ages.*"

The Serjeant was helpless in court, the laugh being always turned against him: but he revenged himself by writing in the margin of his law books many contemptuous observations on Lord Mansfield, which may now be seen in Lincoln's Inn library. He survived to my time; and, although he had ceased to go into court, I have seen him walking up and down in Westminster Hall, wearing a great shovel hat, attached to his head with a silk handkerchief tied round his chin.

Mr. Murray of Henderland, he added, "I was two or three years afterwards sitting at the Cock-pit¹ upon Plantation appeals, when there was one called from my friend and pupil, the General,—which the losing party had been induced to bring on account of the ludicrously absurd reasons given for the judgment, which indeed were so absurd that he incurred some suspicion of corruption, and there was a clamor for his recall. Upon examining it, however, I found that the judgment itself was perfectly sound and correct. Regretting that my advice had been forgotten, I was told that the General, acquiring reputation by following it, began to suppose himself a great lawyer; and that this case brought before us was the first in which he had given his reasons, and was the first appealed against."

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By the display of the wonderful powers and attainments to which I have referred, Lord Mansfield more steadily filled a large space in the public eye than any civilian of his generation; and, sitting on his tribunal, he had acquired a fame equal to Wolfe or to Rodney. Of this we have an instance in the following dialogue at the table of Dr. Scott (afterwards Lord Stowell), at which many of the most distinguished men of the day were present:—*Johnson*: "Every man thinks meanly of himself for not having been a soldier, or not having been at sea." *Boswell*: "Lord Mansfield does not." *Johnson*: "Sir, if Lord Mansfield were in a company of

The space
occupied
by Lord
Mansfield
in the public
eye.

1. The next line of buildings, surmounted by a row of the meaningless tea-urns beloved by unimaginative architects, is the Treasury, which was first established in the Cock-pit of Whitehall by Charles II., and has remained there ever since. It occupies the site of the apartment in the palace where General Monk, Duke of Albemarle, died, Jan. 4, 1670, and his low-born duchess, Nan Clarges, in the same month. It was from hence also that Anne escaped, and here Guiscard tried to stab Harley, Earl of Oxford, March 8, 1711, but fell under the wounds of Lord Paulet and Mr. St. John. The present buildings, erected by Sir C. Barry, 1846-7, include the Board of Trade, the Home Office, and the Privy Council Office.—*Hare's Walks in London*, vol. ii. p. 223.

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general officers and admirals, who have been in service, he would shrink ; he'd wish to creep under the table."

Boswell : "No ; he'd think he could *try* them all."

Johnson : "Yes, if he could catch them ; but they'd try him much sooner. No, sir ; were Socrates and Charles the Twelfth of Sweden¹ both present in any company,

I. Charles XII., King of Sweden, a celebrated conqueror, born at Stockholm June 27, 1682, was the eldest son of Charles XI. and Ulrica Eleonora of Denmark. He was invincibly obstinate from childhood. The only way of moving his will was through the sentiment of honor. He made himself master of Latin, French, and German. He succeeded his father in April 15, 1697, and followed the counsels of Count Piper, who was in fact, though not in name, the Prime Minister. An opportunity to exert and develop his extraordinary martial genius was soon presented by the cupidity of three kings, who proposed to take advantage of his youth and to partition his dominions among themselves. These were Peter I. of Russia, Frederick IV. of Denmark, and Augustus, King of Poland, who, in 1700, formed a league against him. With intrepid alacrity he prepared for the unequal contest. He became extremely frugal in his dress, food, and mode of living. His body, by severe exercise, was made proof against fatigue. Denmark having begun the war by attacking the Duke of Holstein, Charles, at the head of his well-disciplined army, left Stockholm (to which he never returned) in May, 1700. Having effected a descent on the isle of Zealand, he besieged Copenhagen until the Danish king sued for peace, which was concluded in August, 1700. Without delay he marched with 20,000 Swedes against the Czar Peter, who, with about 80,000 men, was besieging Narva. Before the arrival of his main army, Charles began the attack with 8000 men, and gained in November, 1700, a complete victory, which filled his adversaries with consternation. In the next campaign he invaded Poland, and, after several victories, formed the design of deposing Augustus, which, by the aid of a strong domestic faction, he easily effected. He designated for his successor Stanislas (or Stanislaus) Leczinski, who began to reign in 1704. Augustus having retired to Saxony, of which he was Elector, Charles invaded that country, fixed his camp near Leipsic, and in 1707 dictated conditions of peace to the Elector, who then renounced the crown of Poland. He received here the ambassadors of various powers, and among them the Duke of Marlborough, who came to sound his intentions. In September, 1707, with an army of 43,000 men, he march towards Moscow to dethrone the Czar, whose armies, in the absence of Charles, had seized Ingria and invaded Poland. In June, 1708, he crossed the Berezina, the passage of which Peter disputed. Charles soon gained a decided advantage near Smolensko. The king considered this his handsomest victory, but it was his last. About this time, according to Voltaire, Peter made overtures for

and Socrates to say 'Follow me, and hear a lecture in philosophy,' and Charles, laying his hand on his sword, to say 'Follow me, and dethrone the Czar,' a man would be ashamed to follow Socrates."¹ The compliment of Boswell may have little weight; but Johnson here allows that Lord Mansfield, though of a nation whom he abhorred and wished to disparage, was the best instance which England then afforded of an illustrious noncombatant, and he brackets him with the greatest of Greek philosophers. Nor was the stern Scot-hater on this occasion influenced by any soothing homage or personal familiarity; for, strange to say, Lord Mansfield and he had never met—as we learn from another dialogue between the same interlocutors. *Boswell*: "Lord Mansfield is not a mere lawyer."

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peace, to which Charles answered, "I will treat with the Czar at Moscow." At Smolensko he changed his course, and marched southward to the Ukraine, where he found an ally in Mazeppa, hetman of the Cossacks. In this march many of his men perished from cold and want of provisions. His operations were suspended in the winter of 1708-09, which was more severe than usual. In the spring his army was reduced to 18,000 Swedes and about as many Cossacks; but he persisted in his design. While he was pressing the siege of Pultowa, and just after he had received a wound in the foot, the Czar, with 70,000 men, came to the relief of the city. In the decisive battle of Pultowa, July 8, 1709, Charles was defeated, with a loss of 9000 killed and 6000 prisoners. With a small body of men he retreated to Turkey, where he was received hospitably by the Sultan, who gave him an asylum at Bender. The agents of Russia urged the Sultan to drive him out of Turkey. When the Turks attempted to remove him, in February, 1713, he fought madly and desperately in resistance, was made prisoner, and taken to Demotica. There, feigning to be sick, he kept his bed about ten months. At last he quitted Turkey, and, passing through Hungary and Germany *incognito*, arrived with one attendant at Stralsund in November, 1714. The Danes, Prussians, and Russians besieged Stralsund, which Charles was forced to surrender in December, 1715. While Sweden was threatened with invasion by the allies, Charles invaded Norway, and was killed by a ball at the siege of Frederikshall on the 11th of December, 1718. He was never married. His sister, Ulrica Eleonora, the wife of Frederick of Hesse-Cassel, was chosen as his successor.

—*Thomas's Biog Dict.*

1. Life of Johnson, iii. 287.

CHAP. *Johnson*: "No, sir: I never was in Lord Mansfield's
 KL. company; but Lord Mansfield was distinguished at the University. Lord Mansfield, when he first came to town, 'drank champagne with the wits.' He was the friend of Pope."¹

It would be highly instructive, considering Lord Mansfield's multiplicity of engagements, all of which he fulfilled so admirably, to have learned what were the rules he laid down for the distribution of his time;—but all we know, and this should ever be borne in mind by those who would rise to eminence, that he was habitually industrious and habitually temperate. A sentence given him as a copy, when he began to learn text-hand at Perth school, was

*Opere peracto ludemus.*²

His habits
 of industry
 and tem-
 perance.

This he used often to repeat in after-life, and always to act upon. For example, when the great case of *Doe ex dem. Taylor v. Horde* was depending, which required a research into some of the most recondite points of the law of real property, he thus wrote to a friend: "I am very impatient to discharge myself entirely of it. While the company is at cards I play my rubbers at this work, not the pleasantest in the world; but what must be done I love to do and have it over." He would sometimes talk of the *dolce far niente*; ³ and would quote the saying, "Liber esse mihi non videtur, qui non aliquando nihil agit."⁴ But, in truth, he re-

1. Life of Johnson, ii. 161. He softened his mortification by the delusive belief that Wm. Murray had been *caught very young*,—and he considered Lord Mansfield as in reality an Englishman when he gave his celebrated answer to the question—"As you praise Buchanan so much, although he was a Scotchman, what would you have said of him, Dr. Johnson, if he had been an Englishman?" "Sir, I would *not* have said of him what I now *do say*,—that he was the only great man his country ever produced."

2. "Our work being done, we may play."

3. "Sweet idleness."

4. "He does not seem to me to be a free man who does not, at some time or other, do nothing."

freshed himself by varying his occupation, and allowing one faculty of his mind to repose while he called another into activity. Of course, such a system was inconsistent with a deranged stomach and aching temples. By nature (Dr. Johnson would probably have said *from early endurance*) he had a marvellous power of bearing abstinence. "After having waited for his regular meal, through the press of much and tedious business, to a late hour at night, he has repeatedly said that he never knew what it was to be thirsty, or faint with hunger."¹ Yet he was no water-drinker; and reverently recollecting how wine was supplied to the guests assembled at the marriage in Cana, on which so many epigrams had been made at Westminster, he thought there could be no sin in the moderate use of it. He had sufficient control over himself to be temperate without being ascetic. He always retained the Scottish taste for claret, which he had heard so loudly extolled and seen so liberally quaffed in his early youth,—and he said that in experience he found it to yield the most pleasure with the least risk of ill consequence. Insisting that it was peculiarly adapted to the temperament of Scotchmen, he would repeat John Home's²

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1. Holl. 56. There might be a curious chapter, in a treatise *DE CLARIS ORATORIBUS*, on the mode of their preparing themselves physically. Sheridan could not speak without a pint of brandy; and a celebrated speech in the House of Lords is said to have been inspired by mulled port. One of the greatest orators of the House of Commons is most powerful and imaginative after eating a pound of cold roast beef, and drinking a quart of small beer; while it is a well-known fact, that the finest speech of the younger Pitt was delivered immediately after a violent fit of vomiting. Some recommend tea; some camphor julep; and one orator, that he may electrify his audience, as often as he is going to speak repairs to the Polytechnic and receives several shocks from a Leyden jar.

2. John Home was born at Ancrum, Roxburghshire, September 22, 1722. He was educated at Edinburgh for the church; but, in the rebellion of 1745, he entered into the royal army, and was taken prisoner at the battle of Falkirk. He contrived however, to make his escape, and, in 1746, was ordained as minister of Athelstaneford, in

CHAP. lines, made when the tax was laid upon it, and sloe-juice
XL. became the substitute:

" Bold and erect the Caledonian stood ;
Old was his mutton, and his claret good.
' Let him drink port,' an English statesman cried :
He drank the poison, and his spirit died."

However, while he allowed his friends, like the Baron of Bradwardine, to indulge in a "tappit hen," he confined himself to a miserable cruet-full, set before him as his stint.

He gave very handsome dinners, not only to his aristocratic acquaintances, but to the Bar ; and every Sunday night in the winter season he had a *levée*, which was attended by distinguished men in all classes of society. This practice was then reckoned quite decorous among clergy as well as laity.¹ But, though he so far conformed to fashion, it ought to be recorded to his credit, that in an age of great profligacy, when

East Lothian. His tragedy of "Douglas" was performed at Edinburgh in 1756, which gave such offence to the presbytery that the author, to avoid ecclesiastical censure, resigned his living. In 1763 he was appointed a commissioner for sick and wounded seamen and the exchange of prisoners. He was also named a conservator of the Scotch privileges at Campvere, in Zealand. In 1778 he obtained a captain's commission in the Duke of Buccleuch's fencibles. Died September 4, 1808. Besides the play of "Douglas" he wrote four others, which are sunk in oblivion ; as also is his "History of the Rebellion."—*Cooper's Biog. Dict.*

1. Boswell, in mentioning Johnson's Tour to the Hebrides, published in 1775, says, "I found his 'Journey' the common topic of conversation in London, at this time, wherever I happened to be. At one of Lord Mansfield's formal Sunday evening conversations, strangely called *levées*, his Lordship addressed me—'We have all been reading your travels, Mr. Boswell.' I answered, 'I was but the humble attendant of Dr. Johnson.' The Chief Justice replied, with that air and manner which none who ever saw and heard him can forget, 'He speaks ill of nobody but Ossian.'"—(Vol. ii. p. 332.) How delightful if the great lexicographer himself had been there, and we could have had from Bozzy an account of the conference between him and the great lawyer who had drunk champagne with the wits ! I wish that he had kept up his literary connections, and that he had been known to us as the friend of Johnson as well as of Pope.

kings, ministers, and judges, with no obloquy and little scandal, openly violated the rules of morality, he always set a bright example of the domestic virtues.¹

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XL.

That I may not be supposed, at the close of my biographical labors, to have degenerated into an indiscriminate panegyrist of my hero, I must notice his defects and his faults. He cannot be considered a man of original genius. With great good sense he selected, he adapted, he improved,—but he never invented. It is only in Virgil's last category of immortals that he is to be inscribed :

Lord
Mansfield's
defects and
faults.

Without
original
genius.

“Quique sui memores alios fecere merendo.”²

It must likewise be admitted that, from a want of moral courage, he quailed not only under the ascendancy of Lord Chatham, whom beings of a superior order to our species might have been afraid to encounter,—but of Lord Camden, who was much his inferior in powers of mind and in acquired knowledge. His cry of *Craven!* when the lists had been stretched and the trumpet had sounded for a passage of arms on the Libel field, lowered his character, and must have been a source of painful remembrance for himself to his dying day. With boldness, he might have gained a victory which would have added new lustre to his name.³

His want
of moral
courage.

A more serious defect was his want of *heart*. No one had a right to complain of him ; he disappointed no just expectation of favor, and he behaved with kindness to all within the sphere of his action ;—but all that he did might have been done from a refined calculating

1. There seems reason to think, that those who were the most intolerant on religious subjects were then often the most immoral : and it is an undoubted fact, that the eighteenth century, in which Dissenters and Roman Catholics were persecuted, was notorious for infidelity and immorality ; while the nineteenth century, along with liberality, has witnessed the spread of true piety, and an increased regard for the precepts of religion.

2. “Men who have insured remembrance by their good deserts.”

3. 16 Parl. Hist. 1321; ante, p. 487.

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XL.

Without
warmth of
affection.

selfishness, with a view to his own comfort and credit. He had no warmth of affection; he formed no friendships; and he neither made exertions nor submitted to sacrifices purely for the good of others.¹ The striking fact to prove that he *reasoned* rather than *felt* is, that he never revisited his native land, from the time when he first crossed the border riding a highland pony on his way to Westminster; although he left behind him his father and mother, who survived many years, and were buried in the church at Scone. It certainly is a very melancholy task to return to the haunts of early life after a long absence, and, little interest being excited by the new faces of the rising generation, a terrible shock is given by the ravages of time among our associates. The touching verses of Morris rush into our recollection,—

"There's many a lad I loved now dead,
And many a lass grown old;
And, as the lesson strikes my head,
My weary heart grows cold."²

But surely it might have been some compensation to him to have stood upon the spot where he first caught a trout in the river Tay;—to have seen his name, carved half a century before with his own hand,

1. Although he never lived in habits of much intimacy with very eminent lawyers, he was not stingy in praising them. He said that, "when Lord Hardwicke pronounced his decrees, Wisdom herself might be supposed to speak"; and on Erskine, whom he had advised to go to the bar, bursting out with lustre, he exclaimed,—

"Cedite Romani; cedite Graii." ["Yield, Romans; yield, Greeks."]

2. Captain Morris's "Reasons for Drinking":

"But wine, for a while, drives off despair;
Nay, bids a hope remain:
And this I think's a reason fair
To fill my glass again!"

Charles Morris, a captain in the Life Guards, author of many convivial songs, which were once highly popular, died at Dorking, Surrey, July 11, 1838, aged 92. His "*Lyra Urbanica, or Social Effusions*," were published in 2 vols., 8vo, 1840.

on the walls of the school-house at Perth ;—to have recollected the pride with which he had returned home to announce that he was DUX ;—to have witnessed the satisfaction of his wondering townsmen in finding their prognostics of his success in life more than fulfilled ;—to have once more been shaded by the tree under which he had taken leave of his parents,—to have again embraced them, or to have wept over their graves. But these things would not have helped him on in the career of ambition, and he cared for none of them.

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From my Whig propensities, I may be expected to take an unfavorable view of his public conduct ; but here I discover little ground for censure. No candid man can blame his early predilection for the *white rose* ; or will say that he was guilty of any culpable inconsistency in taking office under the established government when the incurable infatuation of the Stuarts had been made manifest, and the nation was enjoying freedom and prosperity under the Brunswick line. He ever afterwards faithfully served the Crown to which he had sworn allegiance. As a party man, he was by no means liable to the charge of versatility and venality which weighed down his countryman Wedderburn. He had never pretended to be a “patriot,” and he never deserted any leader under whom he had enlisted. Although he was called a Whig in the reign of George II., the principles which he then avowed were the same with those which he acted upon in the reign of George III. when he was called a Tory. These were essentially Tory principles, and I individually dissent from them, but, as his biographer, I am not entitled to say that they were wrong. He entertained them sincerely, and acted upon them steadily, without ever suffering his love of prerogative or his jealousy of popular privileges to betray him into any act of sycophancy or of oppression. He ought to have been aware, however,

Defence of
Lord
Mansfield's
public con-
duct.

CHAP. XL. of the unconstitutional nature of the arrangement by which, being Chief Justice of the King's Bench, he was, under various administrations, a member of the Cabinet; and the very boast that he made in Wilkes's case, *that he had no concern in originating the prosecution*, proved his consciousness of the incompatibility of the duties which he had undertaken to perform. I am afraid, likewise, that after Lord Bute's resignation, and on several subsequent occasions, he gave advice in the royal closet as the "King's friend," and that he exercised power without official responsibility. But these aberrations were thought of small importance eighty years ago,—when, although our constitution was theoretically the same, its practical working was very different from what we are accustomed to under the auspicious rule of Queen Victoria!

I add a few strictures upon the character of Lord Mansfield by others who may be much more deserving of the attention of the reader. And I begin with a lampoon, to comfort those who are now the objects of similar attacks, and to show them that, if they have any real merit, it will not be long clouded even by the grossest scurrility. Thus was he described in an article in a newspaper, supposed to be written by a professed friend holding a high judicial situation: ¹

Lampoon
upon Lord
Mansfield
supposed
to be writ-
ten by a
Chief Jus-
tice.

"Full of the *tatterdemalion* honor of the man of quality, forsooth! of his own country, he used to insult the English suitors in harangues of virulence and abuse. He had no persuasion in his manner, sweetness in his voice, nor energy in his expression; no variety of turn in tone and cadence, adapted to the purport of the matter he treated; but was cursed with a loud, clamorous *monotony*, and a disagreeable discordance in his accents, as struck so harsh upon the ear that he seemed rather to scream than to plead; and, from thence, was called '*Orator STRIX*,' or the Caledonian Screecher. He assumed a bullying audacity in his manner,

1. Chief Justice Willes.

and seemed, by a pertinacious importunity, to overbear rather than gain the bench. This faculty, however, recommended him to the notice of such solicitors as dealt among the *canaille*, which, being much the larger part of the profession, supplied him with a competence of business."¹

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But Smollett,² in his history of the reign of George II., when noticing the supporters of Mr. Pelham's ad-

1. Broadbottom Journal, June 27th, 1746.

2. Tobias Smollett was the grandchild (by a younger son) of Sir James Smollett of Bonhill in Dumbartonshire, and was born in that county in 1721. He was educated in Glasgow for the medical profession; but he attended more to literature, wrote a tragedy in his eighteenth year, and soon afterwards, by his grandfather's death, was left to his own resources, and sought his fortune in London. Being appointed, in 1741, a surgeon's mate in the navy, he was present in the unfortunate expedition to Carthage, spent some time elsewhere in the West Indies, and returned to England in 1746. He threw himself perforce on literature for a livelihood, married a lady whose fortune proved to be disappointingly small, and destroyed any chances he might have had as a play-writer by quarrelling with managers. "Roderick Random," his earliest novel, appeared in 1748, and "Peregrine Pickle" in 1750. He next attempted medical practice in Bath; but, being quite unsuccessful, returned to London, and became an author for life. His time thenceforth was chiefly employed in the performance of task-work, relieved only at intervals by the composition of his later novels, and of a few pieces in verse, insufficient to give him any considerable rank as a poet. He was haughty and quarrelsome, but good-hearted and benevolent; and this union of qualities fitted him equally ill for saving money out of the precarious gains of authorship, and for enjoying comfort in the stormy vocation of a political partisan and literary critic. The best known of his miscellaneous works are two: the indifferent translation of "Don Quixote," and the very careless "History of England," of which the portion extending from the Revolution to the death of George II. has repeatedly appeared as a sequel to Hume. For a long time after 1756 Smollett edited, with great ability, but not less acrimony, the *Critical Review*, established as an advocate of the Tory and High Church party; and Wilkes's famous *North Briton* owed its existence and its name to his paper *The Briton*, in which he defended the administration of Lord Bute. His novel of "Count Fathom" appeared in 1753; and "Sir Lancelot Greaves" was written in 1756, while the author was undergoing imprisonment for a libel. Visiting the continent in 1763 and 1764, when his circumstances and health were shattered, and his spirits sunk by the death of his only child, he published, on his return, his clever but peevish "Travels through France and Italy." His ill humor vented itself anew in "The Adventures of an Atom" (1767). After having

CHAP. XL. ministration, mentions Mr. Murray as entitled to the first place in point of genius :

His character by Smollett.

" This gentleman," he continues, " the son of a noble family in North Britain, had raised himself to great eminence at the bar by the most keen intuitive spirit of apprehension, that seemed to seize every object at first glance ; an innate sagacity, that saved the trouble of intense application ; and an irresistible stream of eloquence, that flowed pure and classical, strong and copious, reflecting in the most conspicuous point of view the subjects over which it rolled, and sweeping before it all the slime of formal hesitation and all the intangling weeds of chicanery."

In a volume of Political Characters, published in the year 1777, to which some of the most distinguished writers of the day contributed, we find the following passage :

By other contemporaries.

" However party prejudices may adopt their different favorites, and each labor in detracting from the merit of the other, it is, we believe, generally understood that precedence is allowed the Earl of Mansfield as the first magistrate that ever so preëminently graced that important station. The wisdom of his decisions, and unbiassed tenor of his public conduct, will be held in veneration by the sages of the law as long as the spirit of the constitution, and just notions of equity, continue to have existence. No man has ever in an equal degree possessed that wonderful sagacity in discovering chicanery and artifice, and separating fallacy from truth, and sophistry from argument, so as to hit the exact equity of the case. He suffered not justice to be strangled in the nets of form. His

applied unsuccessfully for a consulship in the Mediterranean, he was again compelled to seek for health in a warm climate ; and, in 1770, he left England, never to return. He died near Leghorn in the autumn of 1771, having just completed " Humphrey Clinker," which is not only the liveliest of his works of fiction, but breathes often a kindlier and more gentle spirit than the rest. Hazlitt, in his " Lectures on the English Comic Writers " and in the *Edinburgh Review*, has excellently described Smollett's novels, and contrasted their coarse and vigorous pictures of externalities with the fine dissection of character which is presented by Fielding.—*Cycl. Univ. Biog.*

genius is comprehensive and penetrating; and, when he judges it necessary, he pours forth sounds the most seductive, equally calculated to persuade and to convince. Among his rare qualifications may be added the external graces of his person, the piercing eye, the fine-toned voice, and harmonious elocution, and that happy arrangement which possesses all the accuracy and eloquence of the most labored compositions."

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XL.

Lord Monboddo,¹ after pointing out the peculiar characteristics of the eloquence of Demosthenes, observes:

"Upon this, so perfect model of eloquence, Lord Mansfield formed a chaste and correct style of speaking, suitable to business, and particularly the business of a judge, to whose office it belongs not only to determine controversies betwixt man and man, but to satisfy the parties that they have got justice, and thereby give ease and contentment to their minds; which I hold to be one of the great uses of law. In this Lord Mansfield, as it is well known, was so successful, that even the losing party commonly acknowledged the justice of his decrees." Then the critic thus apostrophizes the object of his praise: "Having spent so many years of your life—more, I believe, than any other man of this age—in the administration of justice, with so much applause and public satisfaction, I hope, my Lord, you will bear with patience and resignation the infirmities of old age; enjoying the pleasure of reflecting that you have employed so long a life so profitably in the service of your country. With such reflections, and a mind so entire as yours still is, you may be said to live over again your worthy life, according to the old saying:

. . . . 'hoc est
Vivere bis, vita posse priore frui.'"²

1. James Burnet, Lord Monboddo, a Scottish jurist, born at the family seat of Monboddo, in Kincardineshire, in 1714, died in Edinburgh May 26, 1799. He graduated at the University of Aberdeen, and was sent to Groningen to study law. In 1738 he returned to Scotland and practised at the bar till 1767, when he was made a judge. His principal works are "A Dissertation on the Origin and Progress of Language" and "Ancient Metaphysics."—*Appl. Encyc.* vol. xi. p. 734.

2. "It is to live twice over to be able to enjoy the retrospect of our past life."

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Bishop Hurd,¹ after a general panegyric on Lord Mansfield for "his shining talents, displayed in every department of the state, as well as in the supreme court of justice, his peculiar province, which would transmit his name to posterity with distinguished honor in the public records of the nation," thus proceeds:

By Bishop
Hurd.

"Of his conduct in the House of Lords I can speak with the more confidence because I speak from my own observation. He was no forward or frequent speaker, but reserved himself, as was fit, for occasions worthy of him. In debate he was eloquent as well as wise ; or, rather, he became eloquent by his wisdom. His countenance and tone of voice imprinted the ideas of penetration, probity, and candor ; but what secured your attention and assent to all he said was his constant good sense, flowing in apt terms and in the clearest method. He affected no sallies of the imagination, or bursts of passion ; much less would he condescend to personal abuse, or to petulant altercation. All was clear candid reason, letting itself so easily into the minds of his hearers as to carry information and conviction with it."

I shall conclude these extracts from English writers with the testimony of Bishop Newton, who had lived with him three quarters of a century :

By Bishop
Newton.

"Lord Mansfield's is a character above all praise ; the oracle of law, the standard of eloquence, and pattern of all

1. Richard Hurd, D.D., an eminent English writer and critic, born at Congreve in 1720, was educated at Cambridge, and became a friend of Warburton. He was appointed Bishop of Lichfield and Coventry in 1775, and translated to the see of Worcester in 1781. The archbishopric of Canterbury was offered to him, but was declined. Among his works, which are very numerous and able, are "Dialogues, Moral and Political," "Letters on Chivalry" (1762), "Commentary on Horace's *Ars Poetica*," "Lectures on the Prophecies," and a "Life of Warburton" (1794). "Hurd has perhaps," says Hallam, "the merit of being the first who, in this country, aimed at philosophical criticism: he had great ingenuity, a good deal of reading, and a facility in applying it ; but he did not feel very deeply, was somewhat of a coxcomb, and assumes a dogmatic arrogance which offends the reader." ("Introduction to the Literature of Europe.") Died in 1808.—*Thomas's Biog. Dict.*

virtue, both in public and private life. It was happy for the nation, as well as for himself, that at his age there appeared not the least symptom of decay in his bodily or in his mental faculties ; but he had all the quickness and vivacity of youth, tempered with all the knowledge and experience of old age. He had almost an immediate intuition into the merits of every cause or question which came before him ; and, comprehending it clearly himself, could readily explain it to others : persuasion flowed from his lips, conviction was wrought in all unprejudiced minds when he concluded, and, for many years, the House of Lords paid greater attention to his authority than to that of any man living."

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Beyond the Atlantic the reputation of Mansfield is as high as in his own country, and his decisions are regarded of as great authority in the courts at New York and Washington as in Westminster Hall. The following tribute to his memory is from Professor Story, one of the greatest jurists of modern times :

"England and America and the civilized world lie under the deepest obligations to him. Wherever commerce shall extend its social influences ; wherever justice shall be administered by enlightened and liberal rules ; wherever contracts shall be expounded upon the eternal principles of right and wrong ; wherever moral delicacy and judicial refinement shall be infused into the municipal code, at once to persuade men to be honest, and to keep them so ; wherever the intercourse of mankind shall aim at something more elevated than that grovelling spirit of barter in which meanness and avarice and fraud strive for the mastery over ignorance, credulity, and folly ;—the name of Lord Mansfield will be held in reverence by the good and the wise, by the honest merchant, the enlightened lawyer, the just statesman, and the conscientious judge. The maxims of maritime jurisprudence, which he engrafted into the stock of the common law, are not the exclusive property of a single age or nation, but the common property of all times and all countries. They are built upon the most comprehensive principles and the most enlightened experience of mankind. He designed them to be of universal application, considering, as he himself has declared, the maritime law to be

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not the law of a particular country but the general law of nations. And such under his administration it became, as his prophetic spirit, in citing a passage from the most eloquent and polished orator of antiquity, seems gently to insinuate : ‘ Non erit alia lex Romæ, alia Athenis ; alia nunc, alia posthac ; sed, et apud omnes gentes et omni tempore, una eademque lex obtinebit.’ He was ambitious of this noble fame, and studied deeply and diligently and honestly to acquire it. He surveyed the commercial law of the Continent, drawing from thence what was most just, useful, and rational ; and left to the world, as the fruit of his researches, a collection of general principles, unexampled in extent and unequalled in excellence. The proudest monument of his fame is in the volumes of Burrow and Cowper and Douglas, which we may fondly hope will endure as long as the language in which they are written shall continue to instruct mankind. His judgments should not be merely referred to and read on the spur of particular occasions, but should be studied as models of juridical reasoning and eloquence.”¹

Imitations
of his
manner of
speaking.

I have often in my youth conversed with men who had practised under Lord Mansfield, and who gave imitations of him. Erskine’s were particularly fine, and, avoiding everything of caricature and exaggeration, came up to the highest notion which could be formed of dignity, suavity, and impressiveness.² But the generation who witnessed the tones and the manner of Lord Mansfield is gone, and that which listened to his imitators is fast passing away.

Likenesses
of him.

With his features and personal appearance all must be familiar, for there were innumerable portraits of him, from the time when he was habited as a King’s Scholar at Westminster, and his countenance was illumined by the purple light of youth, till he was changed “into the lean and slippered pantaloon.”³ Fortunately,

1. Story’s Miscellaneous Works, 411, 412.

2. Erskine’s Mansfield was said to be as good as the late Lord Holland’s Thurlow ; to the excellence of which I can testify, having once seen and heard the original.

3. The first extant is by Vanloo ; and the last by Copley, a few weeks before his death.

before reaching the seventh age of man, his *strange eventful history* was brought to a close. The two best representations of him are supposed to be a full-length, in judicial robes, by Reynolds,¹ in the Guildhall of the city of London,—the scene of his greatest glory; and another, by Martin,² in the hall of Christ Church College, Oxford, where he appears in an Earl's robes, sitting at a table, his right hand resting on a volume of Cicero, and a bust of Homer placed before him. There is likewise an admirable marble statue of him, by Nollekens,³ to be seen in Trinity Hall, Cambridge. En-

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1. Sir Joshua Reynolds (1723-1792), an English painter. For three years and a half he studied his profession in various cities of Italy. In the Vatican he caught a severe cold which resulted in permanent deafness. He was unable at first to appreciate the paintings of Raphael, and they never had much influence upon his style, which naturally imitated that of the great Venetian masters more than any others. He returned in the latter part of 1752 to London, and by a full-length portrait of Commodore Keppel, executed not long after his arrival, placed himself at the head of his profession in England, and in public estimation almost on a level with Van Dyck. His portraits of women and children are among the most admired productions of modern art.—*Appl. Encyc.* vol. xiv. p. 283.

2. John Martin, an English painter, born 1789, died in Douglas, Isle of Man, 1854. He was apprenticed to a coach-maker to learn heraldic painting, and subsequently to an Italian artist named Musso, whom he accompanied in 1806 to London. He supported himself for several years by painting on china and glass, and teaching. In 1812 he produced, after a month's labor, "Sadak in Search of the Waters of Oblivion," which was exhibited in the Royal Academy and sold for 50 guineas. It was followed by the "Expulsion from Paradise" (1813), "Clitie" (1814), and "Joshua Commanding the Sun to Stand Still" (1815). The last received the prize of the year at the British Institution. Many others followed, one of which, "Belshazzar's Feast" (1821), obtained the premium of 200*l.* from the British Institution.—*Beeton's Biog. Dict.*

3. John Nollekens, an English sculptor, born in London 1737, died there 1832. He was the son of an Antwerp painter who settled in London; and he acquired his art in the studio of the sculptor Scheemakers. In 1759-60 he obtained several prizes from the Society of Arts, and afterward spent ten years in Rome, returning to London in 1770. He executed portrait busts of many eminent men, several monumental works, and a number of statues of classical subjects, the best of which is the "Venus Combing her Hair." His best known work is the statue of William Pitt at Cambridge. He amassed

CHAP. XL. gravings and casts from these were formerly to be found almost in every cottage in Great Britain. But they will soon moulder into dust.

Aspiration
of the
Author.

I have striven in this memoir to enable his admirers to follow the counsel given by Tacitus¹ in concluding the life of Agricola:² "ut omnia facta dictaque ejus

a fortune of 200,000*l.* and, being childless, bequeathed the greater part of it to his friends Francis Palmer and Francis Douce the antiquary.—*Appl. Encyc.* vol. xii. p. 473.

1. Caius Cornelius Tacitus was the son of Cornelius Tacitus, procurator and governor of one of the provinces in Belgic Gaul, and born about A.D. 56. He distinguished himself at the bar, and such was his reputation that at the age of twenty he was chosen by Agricola for his son-in-law. In the seventh year of Domitian he became prætor, and member of the quindecemviral college; but soon after he left Rome, and during his absence Agricola died, whose life he wrote with affection and elegance. In the short reign of Nerva he succeeded Virginus Rufus as consul, and delivered the funeral oration in honor of his predecessor. Under Trajan, Tacitus enjoyed great distinction, and lived on terms of friendship with the younger Pliny, in conjunction with whom he pleaded against Priscus, the proconsul of Africa. It was at this period that he published the History of Rome, from Galba to the death of Domitian, part of which only has escaped the ravages of time. This work was followed by the "Annals," from the year of Rome 767 to the death of Nero in 821. Tacitus intended also to have written the history of Augustus; but it does not appear to have been ever executed. Besides the Dialogue on Oratory, the Life of Agricola, and portions of the History and Annals of Rome, we have remaining of this great writer a treatise on "The Manners of the Germans." When Tacitus died is uncertain. There are translations of Tacitus by Thomas Gordon and Murphy.—*Cooper's Biog. Dict.*

2. Cneius Julius Agricola, a Roman commander, born A.D. 38 at Frejus, in the reign of Caligula, by whom his father, Julius Græcinus, was put to death for refusing to plead against Marcus Silanus. The first military service of Agricola was under Suetonius Paulinus in Britain. On his return to Rome he married a lady of rank, and was made quæstor in Asia, where he maintained the strictest integrity. He was chosen tribune of the people, and quæstor, under Nero; and under Galba he was appointed commissioner to examine the state of the treasures belonging to the temples which Nero had avariciously confiscated. By Vespasian he was made a patrician and governor of Aquitania. The dignity of consul followed, and in the same year he married his daughter to the historian Tacitus. Soon afterwards he was made governor of Britain, and carried his conquests into a remote district of Scotland, where the famous engagement took place between the Romans and the Caledonians, under the

secum revolvant, famamque ac figuram animi magis quam corporis complectantur." ¹ I wish I could venture to add, "Quicquid ex eo amavimus, quicquid mirati sumus, manet mansurumque est in animis hominum, in æternitate temporum, famâ rerum." ²

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able though unsuccessful leadership of Galgacus. Domitian, envying Agricola's virtues, recalled him, and ordered him to enter Rome in the night, that no triumph might be granted to him. He obeyed, and, without betraying any resentment, retired into private life. He died A.D. 93, not without suspicion of having been poisoned by the tyrant.—*Cooper's Biog. Dict.*

1. That mankind should continue to contemplate all that he said and did, and that, cultivating his fame, they should cherish the qualities of his mind rather than the lineaments of his person.

2. All that was amiable in him, all that was admirable, remains, and will forever remain ; being narrated in the annals of his country, and embalmed in the remembrance of a grateful posterity.

CHAPTER XLI.

LIFE OF LORD KENYON, FROM HIS BIRTH TILL HE WAS
APPOINTED CHIEF JUSTICE OF CHESTER.

CHAP.
XLI.
Composition of this
Memoir an unpleasant
task for the biog-
rapher.

I BEGIN this Memoir at a time when I have the near prospect of being myself a CHIEF JUSTICE, and when I may calculate upon being subjected in my turn to the criticism of some future biographer.¹ On every account I wish to speak of Lord Chief Justice Kenyon in a spirit of moderation and indulgence. But I am afraid that my estimate of his character and judicial qualifications may call forth against me a charge of prejudice and detraction. Although till raised to the bench he was considered only "*leguleius quidam, cautus et acutus*,"² he was afterwards celebrated by dependents and flatterers as a GREAT MAGISTRATE, to be more honored than the all-accomplished MANSFIELD. And from the stout resistance which then continued to be offered in Westminster Hall to all attempts to relieve the administration of justice from wretched technicalities, Lord Chief Justice Kenyon was long hailed as the Restorer of the rigid doctrines to be deduced from the Year Books.

He was indeed a man of wonderful quickness of perception, of considerable intellectual nimbleness, of

1. 12 October, 1849.—It had then been intimated to me by the Prime Minister that upon the resignation of Lord Denman, which, from his severe attack of paralysis, was daily expected, I should be appointed his successor.

2. "A certain pettifogger, prudent and keen."

much energy of purpose, and of unwearied industry; —he became very familiarly acquainted with the municipal law of this land;—he was ever anxious to decide impartially; and he was exemplary in his respect for morality and religion. But never having supplied by study the defects of a very scanty education, he was unacquainted with every portion of human knowledge except the corner of jurisprudence which he professionally cultivated;—he had not even the information generally picked up by the clever clerk of a country attorney from bustling about in the world;—of an arrogant turn of mind, he despised whatever he did not know, and, without ever *doubting*, bitterly condemned all opinions from which he differed;—giving way to the impulses of passion, he unconsciously overstretched the severity of our criminal code;—he never sought to improve our judicial system either by legislation or by forensic decision;—and his habits of sordid parsimony brought discredit on the high station which he filled. It is impossible, therefore, that in tracing his career I should be able to abstain from sometimes expressing regret and censure. I must thus incur the displeasure of some Englishmen who have been accustomed blindly to admire him, and of the whole Welsh nation, who [not from a penury of great men] worship him as an idol, and prefer him to their countryman Chief Justice Vaughan, who really was a consummate common-law judge, and to their countryman Sir Leoline Jenkins,¹ who was both a profound civilian

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1. Sir Leoline Jenkins, LL.D., a statesman, born at Llantrissant, Glamorganshire, about 1623. He was educated at Jesus College, Oxford, till the Rebellion forced him from thence, on which he became a travelling tutor. At the Restoration he returned to college, was created doctor of laws, and elected principal. He then removed to Doctors' Commons, was admitted an advocate, and in 1665 appointed judge of the Court of Admiralty. In 1672 he was sent as ambassador to treat of a peace with the Dutch, but without success. He was afterwards at the treaty of Nimeguen, in conjunction with

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and a distinguished statesman. But as Lord Kenyon actually was Chief Justice of England for fourteen years,—in the prosecution of my plan I must proceed, whatever perils I may encounter.

Family
of the
Kenyons.

One might have expected that we should have had a Kenyon pedigree extending to KING ARTHUR, if not to ADAM; but although the family, when transplanted to the Principality, became intensely Welsh, this event happened so recently as the commencement of the last century. In the reign of Charles II. the Kenyons were settled in Lancashire, one of them representing the borough of Clitheroe in the House of Commons, and another being deputy-governor of the Isle of Man¹ under Sir William Temple, whom he succeeded as ambassador at The Hague. After his return to England he was sworn a privy councillor, and made Secretary of State, which office he resigned in 1684, and died Sept. 1, 1685. His letters and papers were published in 2 vols., fol., 1724.—*Cooper's Biog. Dict.*

1. The Isle of Man (Mona) was in early times inhabited by a Celtic population of the Goidelic stock. According to Bede, it was included in the empire of Edwin of Northumbria. Subsequently it was settled by Norse pirates, and its political institutions have since been mainly of the Norse type, the bulk of the population and the language remaining Celtic. On its conversion to Christianity it became the seat of a bishopric called the bishopric of Sodor (*i.e.*, the Southern Isles, *Sudreyjar*) and Man, which first depended on Trondhjem, but ultimately on York. In 1264 Alexander III. of Scotland acquired the Southern Isles by purchase from Magnus of Norway, and in 1275 finally subdued the Manxmen. Shortly afterwards the island came into the hands of the English, and in 1290 was granted by Edward I. to John Baliol. In 1307 Piers Gaveston was made lord of the island by Edward II., though he did not retain his territory for long. Man now passed successively through the hands of the Montagues, Scropes, and Percys, until it was given in 1406 to Sir John Stanley, who became Lord or King of Man; the island remained in the possession of the Stanley family (earls of Derby) until 1735, when it became the property of the dukes of Athole; it was partly sold to the Crown in 1765, and entirely given up by its owner in 1829. In 1651 Castle Rushen, at Castletown, the capital, was bravely defended by Charlotte de la Tremouille, Countess of Derby, against the Parliamentary forces, and was only surrendered at last owing to the treachery of the governor, Christian. The island was given back to the Stanleys at the Restoration. During the last century it was notorious as the resort of smugglers. The government of the island is independent, and is administered

the Earl of Derby.¹ The Chief Justice's grandfather, a younger brother without portion or profession, married the heiress of a Mr. Luke Lloyd, a yeoman, who had a small estate at the Bryn, in the parish of Hammer, in the county of Flint; and their son, following a good example, gained, by marriage with the daughter of Mr. Robert Eddowes, the small estate of Gredington, in the same parish. He was now elevated to the rank of a country gentleman, and his name was inserted in the commission of the peace for Flintshire—a distinction of which Lord Kenyon used often to boast. The squire, or squireen, cultivated his own land, and in point of refinement was little above the low level of the surrounding farmers. He had a numerous family, whom he found it a hard matter to maintain and decently to educate.

His second son, who was to confer such honor upon Gredington, was born there on the 5th of October, 1732, and, out of compliment to his maternal grandmother, was baptized by the name of Lloyd. This boy, though rather of an irascible disposition, and accustomed, it is said, to beat his nurse with his little fists when she crossed him, early displayed very quick parts, and was very affectionate. Having been taught to read at a dame's-school in the village, he was sent to

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Birth of
Lord
Kenyon.

by a governor and the Tynwald, which is composed of two houses—namely, the Upper House, or Council, consisting of certain officials (usually ten in number), and the House of Keys, which consists of twenty-four of the principal islanders. There are two deemsters, or judges, who try civil and criminal cases; there are courts of exchequer and chancery besides common-law courts.—*Dict. of Eng. Hist.*

1. Charles Stanley, eldest son of James Stanley, seventh Earl of Derby, was born Jan. 19, 1627–8. He took part in Sir George Booth's abortive rising in 1658, and was restored as eighth Earl of Derby on the reversal of his father's attainder at the Restoration. He was author of "The Protestant Religion is a Sure Foundation of a True Christian," 1668, 4to (2d ed. 1671), and "Truth Triumphant," 1669, 4to. He died in December, 1672, and was buried at Ormskirk.—*Nat. Biog. Dict.*

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the free grammar-school in the neighboring town of Ruthin, which had the reputation of being the best classical foundation in the Principality. Here he stayed long enough to acquire a little Latin in addition to his Welsh and English ; but he never knew even the Greek characters, and of no other language had he a smattering, except some law phrases in Norman French.

His defective education.

He never advanced farther in the abstract sciences than the "Rule of Three" ; and he is said piously to have believed to his dying day that the sun goes round the earth once every 24 hours.

He is apprenticed with an attorney, A.D. 1745.

Of four brothers he was declared to be the '*cutest*, and he was dedicated to the law ; but there was then no notion of his ever rising higher than being a Welsh attorney—advising the overseers of the adjoining parishes, and carrying on suits in the Court of Quarter Sessions for the county of Flint. Accordingly, at the age of 14, he was articled to Mr. Tomkinson, an attorney at Nantwich ; and for five years he was taught to serve writs and to engross deeds. "Gracious Heaven !" exclaimed William Cobbett,¹ who preferred enlisting as a

1. William Cobbett, a popular and vigorous political writer, born at Farnham, England, in 1762. He was the son of a farmer, and was self-educated. About 1784 he enlisted in the army, and served with honor in North America until 1791. Having left the service, he emigrated to the United States in 1792, and became a resident of Philadelphia, where he issued *Peter Porcupine's Gazette*, a Federalist paper. He was fined \$5000 for a libel on Dr. Rush. In 1800 he returned to England, and established in London *The Weekly Political Register*, which at first was a Tory paper ; but after the lapse of several years he became a strenuous opponent of Pitt and of the Tories. For his political libels or satires on members of government he was several times fined heavily, and in 1810 was sentenced to imprisonment for two years. He continued to issue the *Register* for thirty-three years. After two unsuccessful attempts to enter parliament for Oldham he was finally returned in 1832, and again in 1834. He died in 1835. He was the author of many successful works, among which are "The Emigrant's Guide," "Cottage Economy," "Advice to Young Men and Women," and "Rural Rides." His style is described as "the perfection of the rough Saxon English." He was remarkable for his mastery of the weapons of sarcasm

common soldier to such occupations, "if I am doomed to be wretched, bury me beneath Iceland snows, and let me feed on blubber; stretch me under the burning line, and deny me the propitious dews; nay, if it be thy will, suffocate me with the infected and pestilential air of a democrat's club-room; but save me, whatever you do, save me from the desk of an attorney." Lord Somers and Lord Macclesfield, although they submitted to the infliction, seemed to have felt the same disgust; and they could only get through their years of apprenticeship by purchasing books of elegant literature, and preparing themselves for the brilliant career to which they were destined. Young Kenyon was not only diligent and assiduous in doing his master's business, but was contented and happy, and never wished for a more amusing pastime than copying a long bill of costs, which gave the history of a lawsuit from the "Instructions to prosecute" to entering "Satisfaction on the Judgment Roll." He by no means confined himself to the mere mechanical part of his trade; on the contrary, he thumbed a book explaining the practice of the courts, and he initiated himself in the mysteries of *conveyancing*, from which the profits of a country attorney chiefly arise.

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XLI.

Lord
Kenyon's
love of the
desk.

Once he was actually seduced to "pen a stanza." A brother clerk, of the name of Cadwallader, was an enthusiastic votary of the muses, and twitted him with his degeneracy from his maternal ancestors, who had listened with rapture

His attempt to
rival the
Welsh
bards.

"To high-born Hoel's harp and soft Llewellyn's lay."

and the resources of common sense, and had great powers of observation and description. "Cobbett," says Hazlitt, "is a very honest man, with a total want of principle. I mean, he is in downright earnest in the part he takes at the time; but in taking that part he is led entirely by headstrong obstinacy, caprice, novelty, pique, or personal motive of some sort. He has no comfort in fixed principles. As soon as anything is settled in his own mind, he quarrels with it. If nobody else can argue against him, he is a very good match for himself."—*Thomas's Biog. Dict.*

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XLI.

The blood of the Lloyds was warmed in his veins, and he declared that although he felt he could not equal Cadwallo, Urien, and Modred, who, he was told, made huge Plinlimmon bow his cloud-topped head, he should show that at least he had a Welsh heart. He took for his subject "WYNNSTAY," the seat of Sir Watkin Williams Wynn, considered in North Wales as the representative of the Welsh Princes—and thus he sung :

" There WATKIN stood firm to Britannia's cause,
Guard of her ancient manners and her laws.
Oh, great, good man ! borne on the wings of fame,
Far distant ages shall revere thy name ;
While Clwyd's streams shall lave the verdant meads,
And Snowdon's mountains raise their lofty heads ;
While goats shall o'er thy hills, O Cambria, stray,
And day succeed to night, and night to day,
So long thy praise, O WILLIAMS, shall remain
Unsullied, free from dark oblivion's chain."

He was himself as much pleased with this composition that he sent it to Gredington, where it was loudly applauded, although there was some apprehension lest, "his parents' wishes doomed to cross," he might be led astray from his professional pursuits ; but when, encouraged by this approbation, he showed the poem to his comrades in the office at Nantwich, he was forever cured of his poetical propensity, for it was received with inextinguishable laughter. Long did "Clwyd's streams" resound in his ears, and a wicked wag reported that the original edition contained the couplet :

" While *cheese* shall cheer the Cambro-Briton's sight,
And *carw dha*¹ shall prove his chief delight."

Kenyon never rhymed more, and it is believed that he never afterwards read a line of poetry during his whole life, except the metrical translation of the Psalms of David when he was at church.

1. "Good ale." The Welsh say that *cervisia* is derived from *carw*.

By his steadiness, intelligence, and uniform good conduct, he was deservedly a great favorite with his master, and he fondly hoped that, to crown his ambition, he might be taken into partnership by this toping practitioner, and eventually succeed him. A negotiation for this purpose was actually opened, but Tomkinson behaved ungenerously,—demanding either a large premium, which the Kenyons could not afford to pay,—or insisting on the young man being contented with a very small share of the profits, which would not have yielded him an income equal to that of a managing clerk.

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XLI.
His disappointment in not being taken into partnership with his master.

It so happened that at this time his elder brother, then studying at St. John's College, Cambridge, died suddenly, and it was thought that Lloyd, now heir to the small family estate, might aspire to the superior grade of the profession of the law. He himself would still have been satisfied with settling on his own account as an attorney at Ruthin, Denbigh, or any neighboring town, where he would have been sure of soon getting into reputable practice by his own merit and his respectable connections,—but he very submissively took the advice that was offered to him, and on the 7th day of November, 1750, he was admitted a student at the Middle Temple.¹ Happy had it been for his fame and for the dignified administration of justice, if he had now been transferred to a university, where his manners might have been polished, his mind might have

He is admitted a student at the Middle Temple.

I.

"Die 7 Novembris 1750.

"*Mar Lloyd Kenyon filius et Hæres apparens Lloyd Kenyon de Gredington in comitatu Flint in principality Walliæ armigeri admissus est in Societatem Medij Templi London specialiter.*

"*Et dat. pro fine 4 o o*"

Examined copy from the books of the Middle Temple. In the Lives of Lord Kenyon hitherto published, it is said that his removal to London and entrance at the Middle Temple did not take place till 1755, although his printed Reports of Cases decided in the Courts of Chancery and King's Bench begin in 1753.

CHAP. been liberalized, and he might have acquired the moderate portion of knowledge expected in an English gentleman.
XLI.

His misfortune in not being required to be initiated in liberal studies.

Surely before students are entered at the Inns of Court there should be a preliminary examination to know whether they have acquired the elements of a liberal education. Such a regulation could not be complained of, like the exclusion of all who could not produce a certificate from the Heralds' College of gentle birth. Leaving a free course to merit emerging from obscurity, it would guard the profession of the law from the intrusion of those who bring discredit upon it by their ignorance, and would protect the administration of justice from being perverted by vulgar prejudices haunting the minds of those placed in high judicial stations. Kenyon, by a little preliminary training at this period of his life, might have been taught to correct or to suppress his bad Latin, and might have escaped the peril which tarnished his judicial reputation, when with furious zeal he thought he was serving the public by laying down for law that a merchant was guilty of a misdemeanor by purchasing commodities with the intent to sell them again at a profit.

His exclusive attention to law.

But he was at once transferred from his desk in his master's office at Nantwich to a very small set of chambers on the fourth story in Brick-court,¹ Middle Tem-

1. On the first floor of No. 2, Brick Court, lived the learned Blackstone, and here in his "Farewell to the Muse," after bidding a fond adieu to the woods and streams of his youth, he wrote—

"Then welcome business, welcome strife,
Welcome the cares, the thorns of life,
The visage wan, the purblind sight,
The toil by day, the lamp by night,
The tedious forms, the solemn prate,
The pert dispute, the dull debate,
The drowsy bench, the babbling hall,—
For thee, fair Justice! welcome all!"

Here the great lawyer was soon immersed in writing the fourth volume of his famous Commentaries; but in his calculation of the

ple Lane. To the few books which he brought with him from the country, were now added Coke upon Littleton, Rolle's Abridgment, and Sheppard's Touchstone. But neither by the advice of others, nor spontaneously, did he become acquainted with any author qualified to enlarge his understanding or to refine his taste. He had no suspicion that his education had been defective, nor the slightest desire to take any knowledge except law for his province.

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Not having a university degree, it was necessary, according to the regulations then in force, that he should be five years a student before he could be called to the bar. During this long period he gave proof of unwearied diligence and rigid self-denial. He pored over his law books day and night. Being once treated to the play, he declared sincerely that he found no pleasure in the performance, and it is said that he never was again within the walls of a theatre till, having reached the dignity of Chief Justice, he was prevailed upon to visit Drury Lane, that he might see the famous melodrama PIZARRO,—when, falling asleep in the middle of the electrifying declamation against “avarice and ambition,” Sheridan, the mortified author, venge-
 His dislike
of the
theatre.

trials of legal life there was one which he had not foreseen. Oliver Goldsmith had taken the rooms above him, and sorely was he disturbed by the roaring comic songs in which the author of “The Vicar of Wakefield” was wont to indulge, and by the frantic games of blind-man's-buff which preceded his supper-parties, and the dancing which followed them. He took and furnished these rooms with 400*l.* received for “The Good-natured Man.” Here Sir Joshua Reynolds, coming in suddenly, found the poet engaged in furiously kicking round the room a parcel containing a masquerade dress which he had ordered and had no money to pay for; and here, on April 9, 1774, poor Goldsmith died, from taking too many James's powders, when he had been forbidden to do so by his doctor—died, dreadfully in debt, though attended to the grave by numbers of the poor in the neighborhood, to whom he had never failed in kindness and charity—“mourners without a home, without domesticity of any kind, with no friend but him they had come to weep for; outcasts of the great, solitary, wicked city, to whom he had never forgotten to be kind and charitable.”—*Hare's Walks in London*, Bk. I. p. 72.

CHAP. fully exclaimed, "Alas! poor man, he fancies himself
XLI. on the bench."

While yet a student at law, young Kenyon would indulge in the amusement of going to the office of Mr. Seckerson, an attorney, who was the town agent of his old master at Nantwich, reading the instructions for conducting pending suits, and seeing how business was prepared for the Courts at Westminster. By-and-bye he diligently attended these Courts himself, and took copious notes of the arguments at the bar and of the judgments. His notes he methodized in the evening into respectable reports, which afterwards were very useful to him, and of which two volumes, containing cases from 1753 to 1759, were published in the year 1819 by his sons. I cannot much praise the style of the reporter, for he was careless about grammar, and he had no notion of elegant composition; but he shows that he perfectly well understood the points which were discussed and decided.¹

He writes
reports of
decisions of
the Courts.

1. These Reports, though posthumous, are from the genuine MSS. of Lord Kenyon, and, having been printed by the consent of his successor in the title, were probably supposed to detract nothing from the first lord's reputation. But there is no evidence that the Chief Justice himself ever designed them for the press; and, like all reports published long after the time when the cases reported in them were decided, they are not much quoted. The only account I find of the work is by Mr. Townsend, the Recorder of Macclesfield ("Lives of Twelve Judges," vol. i. p. 38). Speaking of Lord Kenyon's early professional life and of his intercourse with Mr. Dunning, he says that Kenyon's diligence often supplied Dunning with "cases for which he might otherwise have searched in vain, and furnished him, when immersed in business, with sound opinions." Mr. Dunning "in turn supplied memoranda of the arguments he had urged in banc, and the admirable judgments of Lord Mansfield. These our young lawyer carefully noted in his commonplace-book, and contrived to amass a large collection of MSS., which were in general more full and complete than the Reports of Strange and Salkeld, and even Burrow, and to which he often referred with satisfaction in his decisions on the bench." However made, the authority of Kenyon's MSS., even during his lifetime, was very considerable in Westminster Hall. In *Doe v. Fonneran* (2 Douglas 487), after a case had been argued twice and decided, the Court of King's Bench, on the

His finances being very limited, he kept account books for many years containing entries of every single farthing which he expended. These are still preserved, and contain mysterious abbreviated items, which have given rise to much speculation and laughter, but I believe that they may be explained without the slightest slur being cast upon his ever exemplary morals. Although the companions in whose society he chiefly delighted were those whom he met at Mr. Seckerson's, he made acquaintance in the Middle Temple Hall with some men who afterwards gained great distinction. Two of these were John Horne Tooke and Dunning, who were allied to him by penury as well as genius. "They used generally in vacation time to dine together at a small eating-house, near Chancery Lane, where their meal was supplied to them at the charge of 7½d. a head."¹ Tooke, in giving an account of these repasts many years after, used to say, "Dunning and myself were generous, for we gave the girl who waited on us a penny a piece, but Kenyon, who always knew the value of money, rewarded her with a halfpenny and sometimes with a *promise*." Kenyon, when elevated to the Bench, without owning to the manner in which he was supposed to have treated the maid, would very manfully point out the shop where he had been accustomed to dine so economically; yet it is said that he displayed evident signs of wounded pride when under a subpoena he was obliged in the Court of Common Pleas to prove the execution of a deed which he had attested while clerk to Mr. Tomkinson, at Nantwich.

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XLI.

He is acquainted with Horne Tooke and Dunning.

His economical mode of dining.

authority of a MS. of his, ordered it to be again argued, and reversed the former decision. The work is in two volumes; 3d Kenyon is bound with vol. ii., separately paged and indexed; there is no title-page. It is called Part II. in the index. In 9th Simons, 447 there is a reference to 3d Kenyon. The work was edited by Mr. Hamner.—*Wallace's Reporters*.

1 Steevens's Memoirs of Horne Tooke.

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XLI.
He is called
to the bar.

Having eaten the requisite number of dinners in the Middle Temple hall, on the 7th of February, 1756, he was called to the bar. But for many years he remained poor and obscure. He had no captivating powers to bring him suddenly forward, and it is recorded to his honor that he never descended to any mean arts with a view to obtain business. For a long time he had absolutely nothing to do in Westminster Hall. He laid himself out for conveyancing, and his Welsh connections gave him a little start in this line. His father furnished him with a Welsh pony, on which he rode the North Welsh Circuit, picking up a few half-guineas. He likewise attended the assizes at Shrewsbury and one or two other towns on the Oxford Circuit ; but these were only a source of expense to him, which he could very ill afford. His resolution, however, was undaunted, and he felt that within him which assured him of ultimate success.

His slow
progress.

He never gained applause by any speech to a jury or even by any brilliant argument to the court ; he was not only totally devoid of oratory, but he had no great power of reasoning ; although he knew with intuitive quickness what was the right conclusion upon any legal question, he had not the art of showing how according to the rules of dialectics this conclusion was to be reached. After he had been ten years at the bar, it is said that he was desirous of quitting the profession of the law and taking orders, but that he could not obtain a presentation to the small living of Hanmer, in the county of Flint, to which he aspired.

His extraordinary merits as a lawyer were first discovered and developed, not by the public, nor by the judges, nor by the attorneys, but by a contemporary barrister. Dunning, instead of continuing to dine on cow-heel, shortly after being called to the bar was making thousands a year, and had obtained a seat in

parliament. He had many more briefs than he could read, and many more cases than he could answer. Kenyon became his *fag*, or in legal language his "devil," —and thus began the career which led to the Chief Justiceship. With most wonderful celerity he picked out the important facts and points of law which lay buried in immense masses of papers, and enabled the popular leader to conduct a cause almost without trouble as well as if he had been studying it for days together,—and many hundreds of opinions which Dunning had never read were copied from Kenyon's MS. by Dunning's clerk and signed by Dunning's hand. The only return which Kenyon received was a frank when writing to his relations, and this courtesy had once nearly led to a fatal quarrel between the two friends, for to the direction of a letter addressed to "Gredington, Flintshire," Dunning waggishly added, "North Wales, near Chester." This insult to the Principality stirred up the indignation of the fiery Welshman, who exclaimed, "Take back your frank, Sir—I shall never ask you for another": and he was flying away in a towering passion, but was at last appeased.

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XLI.

He fags for
Dunning.

It gradually oozed out in the profession that Dunning's opinions were written by Kenyon, and the attorneys thought they might as well go at once to the fountain-head, where they might have the same supply of pure law at much less cost. Cases with low fees came in vast numbers to Kenyon, and so industrious and ready was he that they were all answered in a day or two after they were left at his chambers. He thus became a very noted case-answerer, and his business in the Court of Chancery gradually increased. One serious obstacle which he had to surmount was the brevity with which he drew deeds as well as bills and answers, for the profits of the attorneys unfortunately being in proportion to the length of the papers which pass

He becomes
a great
case-answerer.

His merits
as a
draughts-
man.

CHAP.
XLI.

through their hands, they are inclined to employ the most lengthy, rather than the most skilful draughtsman. But Kenyon refused to introduce any unnecessary recital, avoided tautology as much as possible, and tried to make the language he employed approximate to that of common sense.

Still, however, he seemed destined to be eminent in his day only in that class of chamber-counsel who make a comfortable subsistence by their labor, and, like other tradesmen, are forgotten as soon as they die.

A.D. 1770.

Dunning, after having been a short time Solicitor General, having resumed his stuff gown and gone into hopeless opposition, could not help him on, and without a powerful patron the honors of the profession were not within his reach.

He fags
for Lord
Chancellor
Thurlow.

But his fortune was made by the elevation of Thurlow to the woolsack. This man of extraordinary capacity and extraordinary idleness, when called to sit in the Court of Chancery earnestly desired to decide properly, and even coveted the reputation of a great judge, but would by no means submit to the drudgery necessary for gaining his object, and as soon as he threw off his great wig he mixed in convivial society or read a magazine. To look into the authorities cited before him in argument, and to prepare notes for his judgments, Hargrave,¹ the learned editor of Coke upon

1. Francis Hargrave (1741?-1821). legal antiquary, son of Christopher Hargrave of Chancery Lane, London. He entered as a student at Lincoln's Inn in 1760. In 1772 he attained considerable prominence at the bar in the habeas corpus case of the negro James Sommersett. Soon afterwards he was appointed one of the King's counsel. In 1797 he was made Recorder of Liverpool, and for many years was treasurer of Lincoln's Inn and a leading parliamentary lawyer. He published many important works. In 1813 his mind broke down, and parliament was petitioned by his wife, Diana Hargrave, to purchase his valuable library of legal manuscripts and printed books, many of the latter containing copious annotations; and on the recommendation of the House of Commons committee, who fully acknowledged Hargrave's eminent services to the public,

Littleton, was employed, but he was so slow and dilatory that the lion in a rage was sometimes inclined to devour his jackal. Kenyon, sitting in court with a very moderate share of employment, having once or twice, as *amicus curiæ*,¹ very opportunely referred him to a statute or a decision, was called in to assist him in private, and now the delighted Chancellor had in his service the quickest, instead of the most languid, of journeymen. He even took a personal liking for Kenyon, although in grasp of intellect, in literary acquirements, in habits of industry, in morals, and in every respect, a striking contrast to himself. Laughing at his country, calling him by no other name than *Taffy*, holding up to ridicule his peculiarities, but knowing him to be a consummate English lawyer, he resolved to reward him by raising him to the bench.

CHAP.
XLI.

A legal dignity falling in, Serjeant Davenport, who had strong claims on the Government and had met with many prior disappointments, thus applied for it, thinking that by his laconic style he might adapt himself to Thurlow's humor: "The Chief Justiceship of Chester is vacant—am I to have it?" The reply was in the same taste: "No, by G—d! Kenyon shall have it."

A.D. 1780.
He is made
Chief
Justice of
Chester.

On Kenyon it was spontaneously bestowed, to his infinite gratification, for it left him still his lucrative practice at the bar; and not only had he a handsome salary with his new office, but Flint, his native county, was within his jurisdiction, and in the presence of his schoolfellows he was to act the part of a Chief Justice.

especially in his published works, his library was purchased by government for 8000*l.*, and deposited in the British Museum. Hargrave died August 16, 1821, and was buried in the vault under the chapel of Lincoln's Inn. Lord Lyndhurst, in a speech delivered in the House of Lords, February 7, 1856, said of him that "no man ever lived who was more conversant with the law of the country."—*Dict. National Biog.*

1. A friend of the court.

CHAPTER XLII.

CONTINUATION OF THE LIFE OF LORD KENYON TILL
HE WAS APPOINTED MASTER OF THE ROLLS.

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He is intro-
duced into
Parlia-
ment.

Jan. 23
1781.
His im-
patience to
meet a
charge of
bribery.

IT has been said that we get on in the world more by receiving favors than by conferring them, and Thurlow was only incited by the snarling criticisms upon the appointment of the new Chief Justice of Chester to push on his *protégé* to higher elevation. Accordingly, on the dissolution of parliament, which took place in the autumn of the year 1780, Thurlow negotiated Kenyon's return to the House of Commons for the now disfranchised borough of Hindon in the county of Wilts. There was a show of opposition at the election, and a petition was presented against the return, charging Mr. Kenyon with bribery. This called forth the only speech which he delivered, till, having long given silent votes, he had the extraordinary luck to be appointed Attorney General. A motion having been made to give precedence out of its turn to the Committee to try the merits of the election for the city of Coventry, "Mr. Lloyd Kenyon said he stood in the predicament of a member petitioned against on the heavy charge of bribery—that his moral character was bleeding afresh every hour the trial of the petition against him was delayed—that, in obedience to the regulations of the House, he had submitted, on the principle of general convenience, to the day on which the Committee to try the petition was fixed to be balloted for—

that he had as much right to acceleration and preference as another; and, if another was to be favored, he should consider it an indication that hostilities were determined against him, and a grievous injury."

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Kenyon's reputation was now very high as a lawyer. By his fee-books still extant, it appears that he made above 3000*l.* a year by answering cases. His opinions being clear, decisive, sound, and practical, gave great satisfaction, although he seldom assigned any reasons or cited any authorities. But he never acquired forensic reputation, and all that could be said for him as a counsel in court was, that he had uniformly read his brief, and was prepared to battle with force, if not with elegance, all the points which could arise in the course of the cause. There are only two criminal trials in which he is stated ever to have been engaged. The first was the prosecution of Mr. Stratton and his associates for deposing Lord Pigot,¹ the Governor of

He is counsel for the defendants in the prosecution for deposing Lord Pigot.

A.D. 1779.

1. George Pigot, Baron Pigot (1719-1777), Governor of Madras, born on March 4, 1719, was the eldest son of Richard Pigot of Westminster by his wife Frances, daughter of Peter Goode, tirewoman to Queen Caroline. George entered the service of the East India Company in 1736 as a writer, and arrived at Madras on July 26, 1737. When a member of council at Fort St. David, Pigot was sent with Clive to Trichinopoly in charge of some recruits and stores. On their return with a small escort of sepoys they were attacked by a large body of polygars, and narrowly escaped with their lives (Malcolm, "Life of Clive," 1836, i. 71). Pigot succeeded Thomas Saunders as Governor and Commander-in-chief of Madras on January 14, 1755. He conducted the defence of the city when besieged by Lally in the winter of 1758-9 with considerable skill and spirit. On the capture of Pondicherry by Lieutenant Colonel (afterwards Sir) Eyre Coote (1726-1783) in January, 1761, Pigot demanded that it should be given up to the presidency of Madras as the property of the East India Company. This Coote refused after consulting his chief officers, who were of opinion that the place ought to be held for the Crown. Pigot thereupon declared that unless his demand was complied with he would not furnish any money for the subsistence of the King's troops or the French prisoners. Upon this Coote gave way, and Pigot took possession of Pondicherry, and destroyed all the fortifications in obedience to orders previously received from England. Pigot resigned office on November 14, 1763, and forthwith returned to England. He was created a baronet on December 5, 1764, with

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Madras. Along with Erskine and other juniors, he assisted Dunning, who led for the defendants; but he

remainder in default of male issue to his brothers Robert and Hugh, and their heirs male. He represented Wallingford in the House of Commons from January, 1765, to the dissolution in March, 1768. At the general election in March, 1768, he was returned for Bridgnorth, and continued to sit for that borough until his death. On January 18, 1766, he was created an Irish peer with the title of Baron Pigot of Patshul in the county of Dublin. In April, 1775, Pigot was appointed Governor and Commander-in-chief of Madras in the place of Alexander Wynch. He resumed office at Fort St. George on December 11, 1775, and soon found himself at variance with some of his council. In accordance with the instructions of the directors he proceeded to Tanjore, where he issued a proclamation on April 11, 1776, announcing the restoration of the Raja, whose territory had been seized and transferred to the Nabob of Arcot, in spite of the treaty which had been made during Pigot's previous tenure of office. Upon Pigot's return from Tanjore the differences in the council became more accentuated. Paul Benfield had already asserted that he held assignments on the revenues of Tanjore for sums of vast amount lent by him to the Nabob of Arcot, as well as assignments on the growing crops in Tanjore for large sums lent by him to other persons. He now pleaded that his interests ought not to be affected by the reinstatement of the Raja, and demanded the assistance of the council in recovering his property. Pigot refused to admit the validity of these exorbitant claims, but his opinion was disregarded by the majority of the council, and his customary right to precedence in the conduct of business was denied. The final struggle between the governor and his council was on a comparatively small point—whether his nominee, Mr. Russell, or Colonel Stuart, the nominee of the majority, should have the opportunity of placing the administration of Tanjore in the hands of the Raja. In spite of Pigot's refusal to allow the question of Colonel Stuart's instructions to be discussed by the council, the majority gave their approval to them, and agreed to a draft letter addressed to the officer at Tanjore, directing him to deliver over the command to Colonel Stuart. Pigot thereupon declined to sign either the instructions or the letter, and declared that without his signature the documents could have no legal effect. At a meeting of the council on August 22, 1776, a resolution was carried by the majority denying that the concurrence of the governor was necessary to constitute an act of government. It was also determined that, as Pigot would not sign either of the documents, a letter should be written to the secretary authorizing him to sign them in the name of the council. When this letter had been signed by George Stratton and Henry Brooke, Pigot snatched it away and formally charged them with an act subversive of the authority of the government. By the standing orders of the company no member against whom a charge was preferred was allowed to deliberate or vote on any question relating to the charge.

only cross-examined a witness, without addressing the jury, and when, after a conviction, the judgment of

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Through this ingenious manœuvre Pigot obtained a majority in the council by his own casting vote, and the two offending members were subsequently suspended. On the 23d the refractory members, instead of attending the council meeting, sent a notary public with a protest in which they denounced Pigot's action on the previous day, and declared themselves to be the "only legal representatives of the honorable company under this presidency." This protest was also sent by them to the commanders of the King's troops and to all persons holding any authority in Madras. Enraged at this insult, Pigot summoned a second council meeting on the same day, at which Messrs. Floyer, Palmer, Jerdan, and Mackay, who had joined Messrs. Stratton and Brooke and the commanding officer, Sir Robert Fletcher, in signing the protest, were suspended, and orders were at the same time given for the arrest of Sir Robert Fletcher. On the following day Pigot was arrested by Colonel Stuart and conveyed to St. Thomas's Mount, some nine miles from Madras, where he was left in an officer's house under the charge of a battery of artillery. The refractory members, under whose orders Pigot's arrest had been made, immediately assumed the powers of the executive government, and suspended all their colleagues who had voted with the governor. Though the government of Bengal possessed a controlling authority on the other presidencies, it declined to interfere. In England the news of these proceedings excited much discussion. At a general court of the proprietors a resolution that the directors should take effectual measures for restoring Lord Pigot, and for inquiring into the conduct of those who had imprisoned him, was carried on March 31, 1777, by 382 votes to 140. The feeling in Pigot's favor was much less strong in the court of directors, where, on April 11 following, a series of resolutions in favor of Pigot's restoration, but declaring that his conduct in several instances appeared to be reprehensible, was carried by the decision of the lot, the numbers on each side being equal. At a subsequent meeting of the directors, after the annual change in the court had taken place, it was resolved that the powers assumed by Lord Pigot were "neither known in the constitution of the company nor authorized by charter, nor warranted by any orders or instructions of the court of directors." Pigot's friends, however, successfully resisted the passing of a resolution declaring the exclusion of Messrs. Stratton and Brooke from the council unconstitutional, and carried two other resolutions condemning Pigot's imprisonment and the suspension of those members of the council who had supported him. On the other hand, a resolution condemning the conduct of Lord Pigot in receiving certain trifling presents from the Nabob of Arcot, the receipt of which had been openly avowed in a letter to the court of directors, was carried. At a meeting of the general court held on May 7 and 9 a long series of resolutions was carried by a majority of ninety-seven votes, which censured the invasion of Pigot's

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the Court was prayed, he waived his right of speaking in mitigation of punishment.¹ Yet we are afterwards surprised all of a sudden to find him leading counsel in a very celebrated trial which required a display of the highest powers of eloquence. However paradoxical it

rights as governor, and acquiesced in his restoration, but at the same time recommended that Pigot and all the members of the council should be recalled in order that their conduct might be more effectually inquired into. Owing to Lord North's opposition, Governor Johnstone failed to carry his resolutions in favor of Lord Pigot in the House of Commons on May 21 (Parl. Hist. xix. 273-87). The resolutions of the proprietors having been confirmed by the court of directors, Pigot was restored to his office by a commission under the company's seal of June 10, 1777, and was directed within one week to give up the government to his successor and forthwith to return to England. Meantime Pigot died May 11, 1777, while under confinement at the company's Garden House, near Fort St. George, whither he had been allowed to return for change of air in the previous month. At the inquest after his death the jury recorded a verdict of wilful murder against all those who had been concerned in Pigot's arrest. The accusations of foul play which were freely made at the time were without any foundation, and no unnecessary harshness appears to have attended his imprisonment. The real contest throughout had been between the Nabob of Arcot and the Raja of Tanjore. Each member of the council took a side, and, though Pigot greatly exceeded his powers while endeavoring to carry out the instructions of the directors, his antagonists were clearly not justified in deposing him. Both parties in the council were greatly to be blamed, and that they were both actuated by interested motives there can be little reason to doubt. The proceedings before the coroner were held to be irregular by the supreme court of judicature in Bengal, and nothing came of the inquiry instituted by the company. On April 16, 1779, Admiral Hugh Pigot brought the subject of his brother's deposition before the House of Commons. A series of resolutions affirming the principal facts of the case was agreed to, and an address to the King, recommending the prosecution of Messrs. Stratton, Brooke, Floyer, and Mackay, who were at that time residing in England, was adopted (Parl. Hist. xx. 364-71). They were tried in the King's Bench before Lord Mansfield and a special jury in December, 1779, and were found guilty of a misdemeanor in arresting, imprisoning, and deposing Lord Pigot. On being brought up for judgment on February 10, 1780, they were each sentenced to pay a fine of 1000*l.*, upon the payment of which they were discharged (Howell, "State Trials," xxi. 1045-1294). Pigot was unmarried. On his death the Irish barony became extinct, while the baronetcy devolved upon his brother Robert Pigot.—*Dict. Nat. Biog.*

1. 21 Stat. Tr. 1045.

may appear, the dry, technical lawyer, who could hardly construct a sentence of English grammatically, was very skilfully selected on this occasion.

Lord George Gordon was about to be tried for his life on a charge of high treason, because the mob which he headed while they strove tumultuously to present a petition to the House of Commons against Popery, had afterwards, when he had left them, committed dreadful outrages in the metropolis, for which many of the chief malefactors had been very properly hanged. There was a strong prejudice against him on account of his imprudent speeches, which had remotely, though unintentionally, led to such disastrous consequences, and it was generally expected that he would be found guilty. He and his friends placed their only hope upon Erskine, who had been lately called to the bar, and had shown powers as an advocate unexampled in our juridical annals. But who was to be the colleague of this extraordinary youth? The statute of William III., to regulate trials for high treason, allowed a full defence by two counsel. No one junior to Erskine could be trusted, and his efforts would have been controlled and cramped by a senior of any reputation. Kenyon was therefore fixed upon. He was known to be a consummate lawyer, it was believed he would do no harm, and he was expected to act as a foil to Erskine, who was to come after him, and was sure to make up for all his deficiencies.

Though at first strongly opposed, from the dread that the jury might definitively make up their minds before Erskine could be heard,—the hazardous plan was adopted, and it succeeded most admirably.

Kenyon, having practised at Quarter Sessions, had some notion of cross-examination, and he thus dealt rather smartly with a witness who had sworn to seeing a flag, with an exciting Protestant motto upon it,

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How he
came to be
counsel
with
Erskine
for Lord
George
Gordon.

His suc-
cessful
cross-ex-
amination
of a wit-
ness.

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carried in the mob which the noble prisoner led on: *Q.* "Can you describe the dress of this man, who, you say, you saw carrying the flag?" *A.* "I cannot charge my memory; it was a dress not worth minding—a very common dress."—*Q.* "Had he his own hair, or a wig?" *A.* "If I recollect right, he had black hair; shortish hair, I think."—*Q.* "Was there anything remarkable about his hair?" *A.* "No; I do not remember anything remarkable; he was a coarse-looking man; he appeared to me like a brewer's servant in his best clothes."—*Q.* "How do you know a brewer's servant in his best clothes from another man?" *A.* "It is out of my power to describe him better than I do. He appeared to me to be such."—*Q.* "I ask you, by what means do you distinguish a brewer's servant from another man?" *A.* "There is something in a brewer's servant different from other men."—*Q.* "Well, then, you can tell us how you distinguish a brewer's servant from any other trade?" *A.* "I think a brewer's servant's breeches, clothes, and stockings have something very distinguishing."—*Q.* "Tell me what in his breeches and the cut of his coat and stockings it was by which you distinguished him." *A.* "I cannot swear to any particular mark." Thus, by a little bullying and browbeating, the witness was thrown into confusion; and although all that he swore about the flag was correctly true, his evidence was discredited.

His
miserable
speech to
the jury.

But when Mr. Kenyon came to address the jury, he performed so miserably that the prosecution resembled an undefended cause, and poor Lord George afterwards declared that "he gave himself up for lost." To exhibit the most favorable specimen of this oration, I select the carefully premeditated *proemium* as it appears in the State Trials, after being corrected by the orator:

"Gentlemen of the Jury,—The counsel for the prosecution having stopped in this stage of the business, giving as a reason

for not producing more witnesses, that they are afraid of tiring out the patience of the Court and the jury, it is the misfortune of the prisoner to make his defence at that period of the day when the attention of the Court and the jury must be, in some measure, exhausted. There are other difficulties which he also labors under ; for, upon this occasion, I, who am assigned, by the Court, to be one of his counsel, confess myself to be a person very little versed in the criminal courts ; I never yet stood as a counsel for a person who had so great a stake put in hazard ; and therefore, gentlemen, in addressing you for him, I stand as a person in very considerable agitation of mind for the consequences which may happen through my defects.

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“ When persons are accused of actions of great enormity, one is apt to look round about one to see what the motives were that could induce the parties so to act. The prisoner at the bar stands before you a member of one of the most considerable families in this country. At the time when this conduct is imputed to him, he was a member of the Legislature ; he stood in a situation which he was not likely to better by throwing the country into convulsions. A person that stood in the situation he stood in, could not make his prospect better than in seeing the affairs of the country conducted under legal government ; and if he thought any inroads had been made upon those laws which the wisdom of our ancestors had enacted, it was his business to bring about the repeal of those laws, to redress those grievances, by proper legal means, and not by causing a revolt in this country. This being the case, and as his conduct may be imputed to good or bad motives, it seems reasonable, and humanity will induce you, to impute it to proper rather than improper motives, the noble prisoner being, as I have said, a man standing in a situation who had everything to expect so long as law prevailed, but nothing to expect when anarchy was substituted in the place of law.

“ The crime imputed to the noble prisoner is, that he being a liege subject of the King, had levied war against the King. The crime is imputed to him under an Act of Parliament enacted for the wisest purpose, that crimes of this very enormous nature should not depend upon loose construction ; but that men, in their journey through life, might, by looking upon the statute, see what the plan of their duty was, might see

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what the rocks were upon which they were not to run, and might see, in the plain words of the statute, what they were to do, and what to avoid. The Attorney General has told you very properly, that the crime which he meant to impute to him was not a crime against the person of the King, but that it was a constructive treason. Gentlemen, I have only to lament that there is such a phrase in the law as constructive treason. At the time when the law was enacted, I verily believe the Legislature had it not in their contemplation that the words constructive treason would find their way into the Courts at Westminster; but however, so it seems the law is; for so it seems, upon some certain occasions, Judges have decided."

He afterwards handled all the witnesses *seriatim* in the order in which they were called, reading their evidence from the notes on his brief, and making trivial comments upon them. At last he arrived at his peroration: "I know that I speak to men of character and station in the world, and of good sense, and who know that their duty is to do justice; and know at the same time that every favorable construction is to be made in behalf of the prisoner. That has always been the language of courts, and will be the language of this court this day."

Peril to the
prisoners.

If the trial had here concluded, the jury, without leaving the court, would inevitably have found a verdict of *guilty*; but Erskine followed and restored the fortune of the day. It was impossible for him, with a grave face, to praise the eloquence of the discourse which had just been delivered; but with the utmost courtesy and generosity he sought to cover the failure of his leader, complimenting him upon his powers of cross-examination, and dwelling particularly upon the "breeches of the brewer's servant." After a most masterly exposition of the law of high treason, he clearly proved that, even giving credit to all that had been sworn on behalf of the Crown, the prisoner had neither imagined the King's death, nor levied war,

Glory of
Erskine.

within the meaning of the statute of Edward III. by which treasons were defined. So there was a glorious acquittal.¹

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It should be related to Kenyon's credit that on this occasion he was entirely free from jealousy and envy, although so outshone. On the contrary, he felt nothing towards his junior but admiration and gratitude, which continued through life, notwithstanding their political differences—insomuch that he would hardly believe the stories which were afterwards told of Erskine's immoralities; and when some things were related which could not be denied, he would exclaim, "Spots on the sun—only spots on the sun!"

Mr. Kenyon's subsequent forensic displays were confined to arguing in the Court of Chancery such matters as the construction of a will or exceptions to the Master's report. But we must now attend to him as a politician. In the House of Commons he steadily voted with Lord North's Government till the critical division which put an end to it. On this occasion he absented himself on the plea of indisposition.²

Thurlow continuing, to the astonishment of all mankind, to hold the Great Seal under Lord Rockingham and the Whigs, now contrived to have his old "devil" Kenyon placed in the situation of Attorney General. This appointment caused considerable discontent, for the law officers of the Crown had long been men of liberal acquirements and of great weight in the House of Commons. Undervaluing his own qualifications, Thurlow observed that the chief object in such an appointment was to have a sound lawyer, who could give good advice to the Government, and that Kenyon was allowed on all hands to be more familiarly acquainted with every branch of the law than any of his

March 8,
1782.
Kenyon
Attorney-
General to
the Rock-
ingham
Adminis-
tration.

1. 21 St. Tr. 485-652.

2. 22 Parl. Hist. 1208.

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competitors,—that the silence which he had hitherto observed in the House of Commons argued discretion, —and that his zealous official services henceforth would be found of high value. The objection that this favorite had been strenuous for carrying on the war with America and against conciliation could not be decently urged, as the patron was in the same predicament. So Lord North's Attorney General Wallace was turned out, and Kenyon, who had copied his principles and his conduct, succeeded him—to the peculiar chagrin of Whig barristers and considerably to the detriment of the new Whig Government. Dunning, became Lord Ashburton, Chancellor of the Duchy of Lancaster, and a member of Lord Rockingham's Cabinet, was suspected, in spite of repeated denials, of favoring the elevation of a man of notoriously anti-Whiggish principles, in consideration of the valuable assistance formerly rendered to himself in answering cases and noting briefs.

The new Attorney General was a little puzzled by some of the questions on international law which arose from the "armed neutrality" of the Northern powers, entered into with a view to encroach on our belligerent maritime rights; but by industry he got up pretty well the learning about blockades, contraband of war, and *free bottoms* making *free goods*, and on all subjects of municipal law he advised the Government more promptly, more decisively, and more correctly than any law officer of the Crown had done for many years.

May 10,
1782.
His alter-
cation with
Sir James
Mansfield.

He first opened his mouth in the House of Commons, after being appointed Attorney General, in an altercation with Mansfield, the late Solicitor General, who, in the debate on Lord Shelburne's measure for arming the people, had represented the volunteers in Ireland as having constituted themselves the govern-

ment of the country, and although several times called to order, had insisted on going on in the same strain. At last "Mr. Attorney General Kenyon expressed his surprise that his learned friend should have put the House under the necessity of calling him to order three different times, and as his speech had a dangerous tendency if persevered in, he must be called to order again." Mansfield declared himself hurt by the Attorney General's speech, which he said could not be calculated for any good purpose, and no part of his past life would justify the imputation that he would intentionally make any observation which could be injurious to the country. *Kenyon*: "I did not speak in the most measured terms, because I saw my learned friend on the brink of a precipice, and I was eager to save him from falling." Mansfield declared himself quite satisfied with this explanation, and their friendship continued without abatement.¹

Mr. Attorney General, till ejected by the Coalition Ministry, spoke only on one subject—the recovery of balances due to the Exchequer from those who had held the office of Paymaster General to the Forces; and here he displayed a zeal which was supposed to be a little heated by his desire to please the Chancellor, by his preference to the Shelburne section of the Cabinet, and by his antipathy to the family of Fox. He astonished the House by his observations on certain resolutions moved by Lord John Cavendish, the Chancellor of the Exchequer, which had for their object prospectively to put the Paymaster of the Forces and other public accountants on fixed salaries, and to prevent them from retaining any public money in their hands to be employed for their own profit. Mr. Attorney General Kenyon said—

"He would not oppose the resolutions, but he would have

1. 23 Parl. Hist. 9.

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His zeal
against
public ac-
countants
explained.

June 18,
1782.

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it understood that he did not preclude himself in the smallest degree from a full right and liberty to discuss in a court of justice the question 'whether the public might not call upon the great servants of the public to account for the great emoluments they had made by means of the public money?' He spoke not from any ill will to any man alive, but solely from a sense of duty in an office which he had been unexpectedly, as he was undeservedly, called to fill. He did not know how long he might remain in it ; but if he should be dismissed from it, he should return to much domestic happiness, which he had enjoyed before he was called into public life : but while he remained in it he was determined to do his duty."

Mr. Secretary Fox : "I cannot join with my learned friend, His Majesty's Attorney General, in the observations he has thrown out. I contend, as I have often done before, that when a balance of public money lies in the hands of a public accountant, all the public have a right to expect from him is, that whenever the money shall be called for, it shall be forthcoming. To future regulations on the subject I offer no objection. I wish that my learned friend would leave some room for prescription and draw some line beyond which his inquiry shall not go, otherwise it will be in the power of the King's Attorney General to keep in constant alarm and the worst of slavery all those who have ever filled any public office and their descendants. It may happen that a public accountant may have acquired a great fortune by a fair and honorable use of public money, and his descendants may, by their folly and imprudence, have completely dissipated and destroyed it : are these descendants to be called upon to account for the profits made by their ancestor ? Let the line be drawn, and I shall be satisfied."

June 25,
1782.

Nevertheless, in the course of a few days, Mr. Attorney General, disclaiming all personal motives, moved certain resolutions, which would have made Mr. Fox, who had not a shilling in the world, although now Secretary-of-State and aspiring to the Premiership, liable for interest on all the balances of public money which had ever been in his father's hands,—on the alleged ground that as the principal sums belonged to

the public, the public was entitled to all the profit made of them,—observing that, although he now acted without communication or concert with any members of the Government, he had consulted lawyers of high eminence in Westminster Hall, who unanimously agreed with him that the rule by which trustees were bound in a court of equity applied to public accountants.

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Mr. Fox : “It might have been as well if my honorable and learned friend had consulted some members of the Government before, as organ of the Government, he moved these resolutions. He says that lawyers whom he has consulted are of opinion that the public have a right to claim all the profits of their own money in the hands of a public accountant. This may be law, but it does not appear to be common sense; and therefore I suspect that it is not law, for the law of England and common sense are seldom at variance. The comparison between a public accountant and a trustee will not hold good. A guardian, for instance, having his ward’s money in his hands, may and ought to put it in a state of lucration. If he vests it in the public funds, and they rapidly fall, the loss falls on the minor, not on the guardian. But what would be said, under similar circumstances, to a public accountant by the Treasury? ‘We have nothing to do with your losses, you must bear them yourself—it was not by our direction that you put out the public money to interest.’ To call for interest from a public accountant would be to justify him in placing the public money out at interest, and to make the public liable for the losses which might ensue.”

Mr. Wallace, the ex-Attorney General, said that whatever others in Westminster Hall might think, he felt no difficulty in declaring that the public had no such right, and he believed that he should not be found singular among the gentlemen of the long robe. It was a clear maxim in law that whatever party received the profit, the same party ought to bear such losses as the property sustained; but all were agreed that the public had nothing to do with any loss arising from the

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The Attorney General took fire at the idea of imputing to him any thoughts of personality or malevolence in his conduct on that day; he hoped the gentleman did not look into his own heart to find out the motives by which he was actuated that day.

Some of the Attorney General's resolutions were withdrawn and the others were negatived.¹

July 1,
1762.
He adheres
to Lord
Sheburne.

On the death of Lord Rockingham and the resignation of the Foxite Whigs, Kenyon continued in office under Lord Sheburne, but took no part in the debates on the treaty of peace, or on any other subject during this administration. The "COALITION" having stormed the Royal closet, he was replaced by his rival Mr. Wallace, and he enlisted himself under Mr. Pitt, without adopting any of the liberal principles which illustrated the early career of this most distinguished statesman.

June 18,
1762.
He is
turned out
to the
"Club"
too.

The ex-Attorney General led the opposition to the first measure of the new Government—a Bill to facilitate the collection of the malt duties—and he acted as teller on the division, but found himself in a minority of 47 to 122.²

1763.
1762.
He joins
the
opposition
to the
Bill.
August.

He returned to the attack upon Mr. Fox by asking a question of the Government, "whether there was any intention of reviving a Bill which he had filed in the Executive against Mr. Powell, the executor of the late Lord Holland, and which had abated by the death of that gentleman?" The Solicitor General said, "he hoped the Bill would never be revived to the full extent of that which had abated—which was for the

recovery of all the profits which had ever been made from the use of public money by the late Lord Holland—a measure which appeared to him so unjust, vexatious, and oppressive—so contrary to the received practice of all Paymasters for a century, and which would lay under such terrible apprehensions the descendants of all former Paymasters, without any limitation as to time, that he would sooner resign his office than concur in such an abuse of the supposed prerogative of the Crown.” Mr. Fox complained that “of all the former Paymasters, his father was the only one whom the late Attorney General had singled out for the purpose of exacting from his executors what would reduce the whole family to beggary. This was a *prosecution* which, considering the situation in which he stood when it was commenced, looked very like a *persecution*.” Mr. Pitt, much ashamed of what had been attempted, said, “he did not himself think that such a demand should be made by the public; but if the demand was legal, though oppressive, his learned friend was justified in enforcing the law, leaving it to the legislature to give relief.” *Mr. Burke*: “Then Empson¹ and Dudley,²

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1. Sir Richard Empson (*d.* 1510) was the son of a tradesman at Towcester. He devoted himself to the law, and came under the notice of Henry VII., who employed him in public duties, and especially in financial affairs. Together with Dudley, Empson was the chief agent of the illegal or quasi-legal extortion of Henry's reign. He incurred great unpopularity in consequence, and was executed with Dudley at the beginning of the next reign.—*Dict. of Eng. Hist.*

2. Sir Edmund Dudley (*d.* 1510) was one of the unprincipled agents of Henry VII.'s rapacity, to which he contrived to lend a kind of legal support by founding it in many cases upon a revival of obsolete statutes. In 1492 he accompanied Henry to France, and it was on his return from this expedition that he united with Empson in inaugurating that system of exaction for which he has obtained so unenviable a notoriety. In 1504 he provides an example of the completeness of Henry's power at that time by his appearance as Speaker of the House of Commons, while the King conferred upon him also the rank and office of a baron of the Exchequer. Dudley and his partner Empson were naturally very unpopular; they were men, to use the words of Bacon, “whom the people esteemed as his

CHAP. XLII. who were properly hanged, might have been justified on precisely the same ground."¹

July 7,
1783.

When a Bill for reforming the abuses of the Exchequer was passing through the House of Commons, the ex-Attorney General showed his gratitude to Lord Thurlow by supporting a clause by which the teller-ship of that noble Lord should be exempted from its operation, on the ground that although there had been no bargain on the subject when he accepted the Great Seal, which would have been very dishonorable, there had been an expectation and an understanding which ought to be respected. Lord North said, "this was what the French called '*unir les plaisirs du vice au mérite de la vertu*,'" and the clause was rejected.²

November,
1783.

In the debate respecting amending the Receipt-Tax, Mr. Sheridan made the House very merry by referring to an opinion of the ex-Attorney General on the subject, which had been published in all the newspapers, along with another, signed OLIVER QUID.

Mr. Kenyon : "I did write the opinion which the honorable gentleman has alluded to in the regular course of my professional practice, not for the purpose of obstructing the collection of the Receipt Tax or annoying the Government. I believe it is sound, and I abide by it. By putting the opinion of a professional lawyer and that of OLIVER QUID on the same footing, the honorable gentleman has lowered himself and not me. With regard to its appearance in the newspapers, I am [Henry VII.'s] horse-leeches and shearers, bold men and careless of fame, and that took toll of their master's grist." On the death of Henry VII. his successor could find no better way to ensure popularity at the opening of his reign than by the surrender to the people's fury of these agents of his father's oppression. Dudley and Empson were accordingly arrested on a charge of high treason, were at once condemned, and executed in August, 1510. So general was the disgust and indignation which Dudley and Empson had excited that it was thought necessary to pass a special Act of Parliament to prevent the recurrence of the illegalities of which they had been guilty.—*Dict. of Eng. Hist.*

1. 23 Parl. Hist. 1060.

2. *Ibid.*, 1090-91.

proud to say that I have no connection with them. I never wrote paragraphs for them, nor paid news writers for the rubbish which they contain. I am not solicitous for newspaper fame, nor are any of the prints of the metropolis retained in my service, although they all may be in the service of others."¹

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This speech is said to have been "very tartly delivered," and it certainly shows great boldness, considering the withering retaliation to which he exposed himself.

When the announcement was made that the Coalition Ministry, equally odious to the King and the nation, had been dismissed, Mr. Kenyon naturally expressed his exultation, and a question having been put whether Mr. Pitt, the new Premier, would dissolve parliament, he said, very properly, "I am not in the secrets of those who are just gone out, or of those who are coming in, and therefore I do not know what measures are likely to be adopted. But this I know, that the power of dissolving parliament is in the Crown alone, and that this House has no constitutional right to prolong its existence by its own authority."² As soon as Mr. Pitt had filled up the higher offices of the Government, Mr. Kenyon again succeeded Mr. Wallace as Attorney General.

Dec. 19,
1783.
Dismissal
of the
"Coalition
Ministry."

In this capacity he only once more came forward, and that was in the discharge of "the duty he had sworn to perform"—compelling the payment of Paymasters' balances. The object of his attack now was Mr. Rigby,³ who had long been Paymaster under

Dec. 26,
1784.
Kenyon
again At-
torney-
General.

1. 23 Parl. Hist. 1222

2. 24 Parl. Hist. 234.

3. Richard Rigby was born in 1722 and died in 1788, and was the only son of Richard Rigby of Mistletoe Hall, Essex. After making the grand tour Richard attached himself to Frederick, Prince of Wales, with whom he ingratiated himself by losing money at play. Upon the prince breaking his promise to appoint him a lord of the bedchamber Rigby broke with him and attached himself to the Duke of Bedford, who conferred upon him many favors, "contriving in a most delicate way to advance him a considerable loan," obtain-

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XLII.
Feb. 1784.
He renews
his attack
on public
account-
ants.

Lord North, and had rendered himself highly obnoxious by siding with the Coalition. Without any notice to him whatever, a motion was abruptly made "That the Right Hon. Richard Rigby, late Paymaster General of the Forces, do deliver to the House an account of the balance of all public money remaining in his hands on the 13th day of November last." Rigby complained bitterly that "the proceeding was contrary to all prac-

ing a pension for his sister-in-law, and procuring him the appointments to the Board of Trade and Master of the Rolls for Ireland. He afterwards attached himself to Henry Fox, but deserted him upon his fall from power. In 1763 his former patron, the Duke of Bedford, took office as president of the council, and Rigby identified himself more closely than ever with his interests. He held a number of lucrative offices, and in 1768 was made Paymaster of the Forces, which he held until 1784, when, as appears in the text, he was called upon by the Attorney General to pay into the Exchequer large balances of public money. "A contemporary of Rigby's said of him, with approximate truth, that the only virtue he possessed was that he drank fair. An unblushing placeman during the worst period of parliamentary corruption, his undoubted talent for addressing a popular assembly was sustained by a confidence that nothing could abash. His education was defective, but he was ready in a rough retort, and Cowper relates a characteristic altercation in which Rigby undertook to teach the rudiments of English to Beckford (a notoriously incorrect speaker), who had ventured to correct his Latin. Wraxall depicts with nice discrimination Rigby's behavior in the House of Commons. 'When in his place he was invariably habited in a full-dressed suit of clothes, commonly of a purple or dark color, without lace or embroidery, close buttoned, with his sword thrust through the pocket. His countenance was very expressive, but not of a genius; still less did it indicate timidity or modesty; all the comforts of the pay office seemed to be eloquently depicted in it. His manner, rough yet frank, bold but manly, admirably set off whatever sentiments he uttered in parliament. . . . Whatever he meant he expressed, indeed, without circumlocution or declamation. There was a happy audacity about his forehead which must have been the gift of nature; art could not obtain it by any efforts. He seemed neither to fear nor even to respect the House, whose composition he well knew, and to the members of which assembly he never appeared to give credit for any portion of virtue, patriotism, or public spirit. Far from concealing these sentiments, he insinuated, or even pronounced them without disguise, and from his lips they neither excited surprise nor even commonly awakened reprehension.' In 1844, in the pages of 'Coningsby,' Disraeli bestowed the name of Rigby on his ideal type of corrupt wire-puller and political parasite. A portrait was engraved by Sayer in 1782." See Dict. Nat. Biog.

tice. The want of civility did not surprise him, as such a thing he had no right to expect from the learned gentleman. He appealed to the House whether even common decency had been observed in bringing forward in such a manner a question so very personal."

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The Attorney General excused the want of notice by his having come down to the House so late, and again dwelt upon the sacred duty cast upon him when he took the oath of office, as Attorney General, to watch over the rights of the Crown :

Mr. Rigby: "I will leave the House to judge of the learned gentleman's candor and his motives. I might ask if any individual ever experienced such treatment from an Attorney General. The obligation of his oath is his excuse. But this prodigious obligation only operates against his political opponents ; and a very different interpretation was put upon the Attorney General's oath of office by his predecessors, Lord Camden, Lord Thurlow, Lord Loughborough, and Mr. Wallace, who really were honorable men."¹

Kenyon had all this time retained the office of Chief Justice of Chester, and twice a year travelled the North Welsh circuit as a Judge.

At the Great Sessions, held at Wrexham, for the county of Denbigh, in September, 1783, the celebrated case stood for trial before him of *The King v. the Rev. William Shipley, Dean of St. Asaph*, which was an indictment for publishing the "Dialogue between a Scholar and a Farmer," written by Sir William Jones. Erskine came special as counsel for the defendant, and, an acquittal being anticipated, a motion was made to put off the trial on pretence that some one unconnected with the defendant had published a pamphlet, and distributed it in Wales, inculcating the doctrine that the jury, in cases of libel, are judges of the law as well as of the fact, and may return a verdict of *not guilty*,

His conduct, as Chief Justice of Chester, in the Dean of St. Asaph's case.

1. 24 Parl. Hist. 672.

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although the act of publication was proved, if they should be of opinion that the alleged libel contains nothing libellous. Erskine very indignantly resisted the application, but was overruled by the Chief Justice. The Dean of St. Asaph made an affidavit, showing that the supposed libel, which was a very harmless explanation of the principles of representative government, had been written by Sir William Jones, lately appointed an Indian Judge, and the prosecution was maliciously instituted by an individual after the Government, by the advice of the Attorney and Solicitor Generals (Mr. Wallace¹ and Mr. Lee), had refused to prosecute, and that he himself was not in any degree privy to the circulation of the pamphlet respecting the rights of juries. This affidavit being read and commented upon by counsel, the defendant himself interposed, and earnestly implored that he might be allowed then to take his trial :

Kenyon, C. J. : “ *Modus in rebus*²—there must be an end of things.”

Dean of St. Asaph : “ Think, my Lord, of the anxiety I have suffered and the expense I am put to. Let me stand or fall by the decision of this jury : let me, if innocent, once more stand up as an honest injured man ; if guilty, let me be dragged to a dungeon.”

Kenyon, C. J. : “ When the jury have given their verdict, if they find you *guilty*, the Court will then consider what judgment to pass.”

Dean of St. Asaph : “ My Lord, in God’s name let me have a verdict one way or the other. Don’t let me be kept longer in suspense.”

1. The Chief Justice professed great respect for Mr. Wallace, with whom he had several times exchanged the office of Attorney General, but was highly offended by his opinion being stated that the “ Dialogue ” was not a libel.

2. This classical quotation his Lordship was in the habit of introducing when he thought it was full time to put an end to any discussion.

Kenyon, C. J. : " I desire that after I have given the judgment of the Court, that judgment may not be talked about ; I have given it upon my oath, and I am answerable to my country for it. I have been before reminded that these things are not passing in a corner, but in the open face of the world. If I have done amiss, let the wrath and indignation of parliament be brought out against me ; let me be impeached. I am ready to meet the storm whenever it comes, having at least one protection—the consciousness that I am right. In protection of the dignity of the Court, I do the best thing I can do for the public ; for if my conduct here is extra-judicially arraigned, the administration of justice is arraigned and affronted, and that no man living shall do with impunity."

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So the trial was postponed,—and when the case was entered again at the Great Sessions in April, 1784, Erskine a second time attending as special counsel for the defendant, it was removed by *certiorari*, and it came on before Judge Buller at the Shrewsbury Assizes in August of the same year,—when the ever-memorable struggle took place between Erskine and Mr. Justice Buller.¹

1. 21 St. Tr. 847.

CHAPTER XLIII.

CONTINUATION OF THE LIFE OF LORD KENYON TILL
HE WAS APPOINTED CHIEF JUSTICE OF THE KING'S
BENCH.

IN the spring of 1784 died Sir Thomas Sewell,¹ who had been many years Master of the Rolls, and Mr. Kenyon claimed the vacant office, which was conceded

CHAP.
XLIII.
A.D. 1784.
Kenyon is
made Mas-
ter of the
Rolls.

1. "The books of the Middle Temple record that Thomas Sewell, son and heir of Thomas Sewell of West Ham, Essex, Esq., deceased, was admitted to that society on June 6, 1729, and was called to the bar on May 24, 1734. It is told of him that in his youth he was 'bred up under an attorney, and afterwards engaged in the laborious business of a draughtsman in Chancery,' and that 'he was called to the bar, where he procured a considerable practice.' The latter fact is confirmed by a letter from William Gerard Hamilton to Mr. Calcraft, stating that at the time Sir Thomas was made Master of the Rolls he was 'in full business at the Chancery,' making 'between 3000*l.* and 4000*l.* per annum.' In 1754 he was appointed one of the King's counsel. He was a member of the two parliaments of 1754 and 1761, representing Harwich in the former, and Winchelsea in the latter. Though the parliamentary history does not report any of his speeches in either, a story is told that on the debate relative to the illegality of general warrants he spoke in favor of an adjournment of the debate, because it would afford him opportunity to examine his books and authorities, and he should be prepared to give an opinion on the subject, 'which at present he was not.' Appearing on the adjournment in his great wig, as his custom was, he said that 'he had turned the matter over as he lay upon his pillow, and after ruminating and considering upon it a great deal, he could not help declaring that he was of the same opinion as before.' On which Mr. Charles Townshend started up and said, 'He was very sorry that what the learned gentleman had found in his night-cap he had lost in his periwig.' On the death of Sir Charles Clarke he was very unexpectedly offered the place of Master of the Rolls, which he accepted on December 12, 1764, to the surprise of the bar, as his professional income greatly exceeded that attached to the office. He was thereupon knighted. He presided most efficiently in his court for twenty years; but in the latter part of his career he suffered

to him. He rather wished to have withdrawn from Parliament altogether, feeling that he was unfit for it; but, luckily for him, the Secretary for the Treasury insisted upon his finding himself a seat, that he might swell the ministerial majority expected in the new House of Commons. As yet Mr. Pitt had no high opinion of him, and had reluctantly agreed to his being restored to his office of Attorney General and to his promotion to be Master of the Rolls. But he was endeared to the Premier by his services connected with the Westminster election.

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Kenyon fulfilled his engagement with the Government by purchasing his return for the borough of Tregony, and he could not have been blamed if, thinking little more of politics, he had simply attended to vote when he received the Treasury circular; but being compelled to disburse a large sum for his seat, he declared (in American phrase) that "he was resolved to go the whole hog." He therefore became a most zealous partisan, and strove to make himself conspicuous as a supporter of the Government. His influence was now great among his countrymen in Wales, and

much from those infirmities the anticipation of which no doubt influenced his determination to quit the laborious duties of a leading barrister. His offers of resignation were ineffectual, the terms he required being too high to be granted. He therefore died 'in harness,' on March 6, 1784, and was buried in the Rolls' chapel. He married twice. His first wife, who died in 1769, leaving three sons and as many daughters, was Catherine, daughter of Thomas Heath of Stansted Mountfichet in Essex, M. P. for Harwich. His second wife, whom he married in 1773, and by whom he had one child who died young, was Mary Elizabeth, daughter of Dr. Coningsby Sibthorp of Canwick in Lincolnshire, professor of botany at Oxford. Of his three sons, one married into a noble family and succeeded to his father's estates at Chobham in Surrey; another was an officer in the army; and the third became rector of Byfleet. Of his three daughters, one was married to the unfortunate General Whitelocke; another to General Sir Thomas Brownrigg; and the third to Matthew Lewis, Esq., deputy secretary of war, by whom she was the mother of Matthew Gregory (commonly called *Monk*) Lewis."—*Foss's Judges of England*.

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he was able to procure votes for the ministerial candidate in several counties and boroughs within the limits of his jurisdiction as Chief Justice of Chester. These services, however, were little noticed, compared with those which he rendered in the election for the city of Westminster. The grand object was, that Mr. Fox might appear to be rejected by his former constituents, and that the disgrace should be heaped upon him of being turned out by a man so obscure and ridiculous as Sir Cecil Wray. His Honor, the new Master of the Rolls, now occupied a house in Lincoln's Inn Fields,¹ beyond the limits of the city and liberties of Westminster; but his stables behind the house were in the parish of St. Clement Danes, within the "Liberties," and for these he was rated and paid *scot and lot*. But, unfortunately, he could not as yet be said to be an *inhabitant* of the city or liberties. To get over this difficulty, he had a bed fitted up in the hay-loft over his stables; there he slept several nights, and then he went to the poll, and gave a plumper for Cecil Wray.

His vote in
the Westminster
election.

The bad
advice he
gave re-
specting
the "Scrutiny."

Such a proceeding might be justified or excused, but I am sorry to be obliged to condemn, in unqualified terms, the advice which he gave respecting the "Scrutiny." This proceeding brought great and deserved obloquy upon the Prime Minister, whose char-

I. Gay says:

"Where Lincoln's Inn, wide space, is rail'd around,
Cross not with venturous step; there oft is found
The lurking thief, who, while the daylight shone,
Made the walls echo with his begging tone:
That crutch, which late compassion mov'd, shall wound
Thy bleeding head, and fell thee to the ground.

Though thou art tempted by the linkman's call,
Yet trust him not along the lonely wall;
In the mid-way he'll quench the flaming brand,
And share the booty with the pilfering band,
Still keep the public streets where oily rays
Shot from the crystal lamp o'erspread the ways."

acter was yet so fair, and Kenyon's support of it was reprobated even by one of the most zealous and able lawyers on the ministerial side.

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After the election had lasted forty days, Mr. Fox had a considerable majority over Sir Cecil Wray; but, at the return of the writ, the High Bailiff, instead of returning him with Lord Hood,² who was at the head

2. Samuel Hood, Viscount (*b.* 1724, *d.* 1816), entered the Royal Navy in 1740. In 1754 he was in the command of a sloop stationed at the Bahama Islands. Several years later he served under Rodney in the bombardment of Havre, and passed the four years which preceded the Peace of Paris in duty off the coast of Ireland, and in the Mediterranean. In the course of the next twenty years he was created a baronet, 1778, and later was appointed rear-admiral, with the command of a squadron of eight ships which was being sent to reinforce Rodney in the West Indies, 1780. On Rodney sailing away to England with a large convoy, Hood was left in command of the fleet off the Leeward Islands. On learning that De Grasse had sailed to America, Hood hastened after him, and a partial engagement occurred between the French and English fleets. Again De Grasse sailed for the West Indies, and was followed by Hood, who baffled for some time the combined efforts of the French fleet and army to take possession of the island of St. Christopher's. The island at length capitulated, and Hood sailed away unmolested to join Rodney at Barbadoes. On April 9, 1782, Sir Samuel Hood, in command of the advanced squadron, consisting of eight ships, came up with the French, and was at once vigorously attacked by fifteen French ships; but so ably did he fight his small detachment, that on Rodney's arrival with the centre squadron De Grasse sailed away. The next two days were occupied in a chase; but on the 12th Rodney managed to bring the French fleet to an engagement off the northwest corner of Dominica. Hood's division was engaged with the French van, and the contest was maintained with much obstinacy and spirit, until the *Ville de Paris*, De Grasse's ship, struck to the *Barfleur*, the flagship of Hood. Hood was rewarded for this victory by the title of Baron Hood in the peerage of Ireland. On the conclusion of peace he returned home, and in May, 1784, was returned as M.P. for Westminster. In 1786 he was appointed Port Admiral at Portsmouth, and two years later was constituted one of the commissioners for executing the office of Lord High Admiral. In 1793 he was appointed Vice-admiral of the Red, and was at once ordered to the Mediterranean as commander-in-chief, with the object of taking possession of Toulon. After a siege of two months this town was reduced. At the end of 1794 he was appointed Governor of Greenwich Hospital, being soon afterwards raised to the English peerage with the title of Viscount Hood (1796). He survived his elevation nearly twenty years.—*Dict. of Eng. Hist.*

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of the poll, corruptly granted a scrutiny, and stated, in answer to a mandate requiring him to return two citizens to serve for the city of Westminster, that "he should proceed with the scrutiny as expeditiously as possible." According to the rate at which it was advancing, the calculation was that it could hardly finish before the end of the parliament, and that it would involve Mr. Fox in an expense of 20,000*l*. Several motions were made in the House of Commons, that the High Bailiff should be ordered to make an immediate return. In opposing these the Master of the Rolls took the lead, and he contended "that the scrutiny was perfectly legal; that it might be continued after the return of the writ; that the High Bailiff could not properly make a return till he had satisfied his conscience which of the two candidates had the majority of good votes; that he ought to have the requisite time for this purpose, and that to force him to make an immediate return would be contrary to the maxim of justice, never to be forgotten—*audi alteram partem*." His Honor likewise mixed up his juridical argument with bitter invectives against the "Coalition," citing several passages from Mr. Fox's speeches during the American War, in which he had asserted that Lord North ought to be impeached and punished.

Honor-
able con-
duct of
Lord
Eldon on
this occa-
sion.

Mr. John Scott (afterwards Lord Eldon), although a warm admirer and generally a steady supporter of Mr. Pitt, took a totally different view of the subject, and contended that both by common law and statute law the election must be finally closed before the return of the writ, so that the subsequent scrutiny was unlawful. Said he :

"A very unnecessary tenderness is shown for the conscience of the High Bailiff. There will be no torture administered to it by compelling him to make a return before he has finished his scrutiny, for his oath only binds him to act ac-

According to the best of his judgment, and to return the candidate that has the majority of admitted votes. I confess I do not like that conscience in returning officers, under color of which they may prevent the meeting of parliament for ever, or at least present the nation with the rump of a parliament on the day when the representatives of the whole nation ought to assemble."

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Mr. Fox, in characterizing his opponents, when he came to the Master of the Rolls, said :

Mr. Fox's
censure of
the Master
of the
Rolls.

"A third person there is whom I might in reason challenge upon this occasion—a person of a solemn demeanor, who with great diligence and exertion in a very respectable and learned profession has raised himself to considerable eminence—a person who fills one of the first seats of justice in this kingdom, and who has long discharged the functions of a judge in an inferior sphere.¹ This person has made a great parade of the impartiality with which he should discharge his judicial conscience as a member of parliament in my cause. Yet this very person, insensible to the rank he maintains or should maintain in this country, abandoning the gravity of his character as a member of the Senate, and losing sight of the sanctity of his station both in this House and out of it, in the very act of passing sentence, is whirled about in the vortex of politics and descends to minute and mean allusions to former party squabbles. He comes here stored with the intrigues of past times, and instead of uttering the venerable language of a great magistrate, he attempts to entertain the House by quoting or by misquoting words supposed to have been spoken by me in the heat of former debates, and in the violence of contending factions. Not only does he repeat what he supposes I said when my noble friend and I were opposed to each other, but he goes still farther back, and to prove that I should now be prevented from taking my seat for Westminster, reminds the House that when I first sat here as representative for Midhurst, I had not reached the full age of twenty-one years. Might I not, then, fairly protest against such a man and men like him sitting in judgment upon me?"

1. Chief Justice of Chester.

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In reference to Mr. Scott's speech, Mr. Fox said :

"One learned gentleman, a political opponent, has shown that he has both honor and intelligence. He has entered into the whole of the case with a soundness of argument and a depth and closeness of reasoning that perhaps have scarcely been equalled in the discussion of any juridical question within these walls."¹

Lord Eldon, when in extreme old age, observed :

"Fox never said an uncivil thing to me during the whole time I sat in the House of Commons, and I'll tell you to what I attribute that. When the legality of the conduct of the High Bailiff of Westminster was before the House, all the lawyers on the ministerial side defended the right to grant the scrutiny. I thought their law bad, and I told them so. I asked Kenyon how he could answer *this*—that every writ and commission must be returned on the day on which it is made returnable? He could not answer it. Fox afterwards came to me privately and said something very civil and obliging."

Kenyon is
made a
Baronet.
Sir Lloyd
Kenyon
and the
Rolliad.

The Master of the Rolls was rewarded for his self-sacrifice by a Baronetcy, but he was made the subject of many cutting jests. The "Rolliad" coming out soon after, the work was dedicated "To Sir Lloyd Kenyon, Bart., Master of the Rolls," and in the title-page was exhibited, as the supposed crest of the family of Rolle, "a half-length of the Master of the Rolls, like a lion, demi-rampant, with a roll of parchment, instead of a pheon's head, between his paws,"—thus celebrated :

"Behold th' engraver's mimic labors trace
The sober image of that sapient face :
See him in each peculiar charm exact,
Below dilate it, and above contract ;
For Nature thus inverting her design,
From vulgar ovals has distinguished thine :
See him each nicer character supply—
The pert no-meaning puckering round the eye ;

1. 24 Parl. Hist. 808-940; 25 Parl. Hist. 1-146.

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The mouth in plaits precise, demurely clos'd ;
 Each ordered feature and each line composed ;
 Where Wisdom sits a-squat, in starch disguise,
 Like Dulness couch'd, to catch us by surprise.
 And now he spreads around thy pomp of wig,
 In owl-like pride of legal honors big ;
 That wig which once of curl on curl profuse,
 In well-kept buckle stiff and smugly spruce,
 Decked the plain pleader ; then in nobler taste
 With well-frizz'd bush the Attorney General graced,
 And widely waving now with ampler flow,
 Still with thy titles and thy fame shall grow.
 Behold, Sir Lloyd ; and while with fond delight
 The dear resemblance feasts thy partial sight,
 Smile if thou canst, and, smiling on this book,
 Cast the glad omen of one favoring look."

"You, Sir Lloyd," said the dedication, "have ever been reputed the immediate author of the scrutiny. Your opinion is said to have been privately consulted on the framing of the return; and your public defence of the High Bailiff's proceeding notoriously furnished Mr. Rolle, and the other friends of the Minister, with all the little argument which they advanced against the objected exigency of the writ. You taught them to reverence that holy thing, the conscience of a returning-officer, above all law, precedent, analogy, public expediency, and the popular right of representation, to which our fathers erroneously paid religious respect." Then, after a long banter in prose upon his Honor for having slept in his stables and voted as the representative of his horses, this poetic effusion follows:

"How shall the neighing kind thy deeds requite,
 Great YAHOO champion of the HOUYHNHNM's right ?
 In grateful memory may thy dock-tail pair
 Unharm'd convey thee with sure-footed care ;
 O ! may they, gently pacing o'er the stones,
 With no rude shock annoy thy batter'd bones,
 Crush thy judicial cauliflow'r, and down
 Shower the mix'd lard and powder o'er thy gown ;
 Or in unseemly wrinkles crush that band,
 Fair work of fairer LADY KENYON's hand.
 No !—may the pious brutes with measured swing
 Assist the friendly motion of the spring,

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While golden dreams of perquisites and fees
 Employ thee, slumbering o'er thine own decrees !
 But when a statesman in St. Stephen's walls
 Thy country claims thee, and the Treasury calls
 To pour thy splendid bile in bitter tide
 On hardened sinners who with Fox divide,
 Then may they, rattling on in jumbling trot,
 With rage and jolting make thee doubly hot,
 Fire thy Welsh blood, inflamed with zeal and leeks,
 And kindle the red terrors of thy cheeks,
 Till all thy gathered wrath in furious fit
 On Rigby bursts—unless he votes with Pitt."

Letter
 from Sir
 Lloyd
 Kenyon to
 the High
 Bailiff of
 Westminster.

Mr. Fox being at last seated for Westminster, and having recovered heavy damages in an action against the High Bailiff for having granted and so long continued the scrutiny, at the end of the Rolliad there is a supposed letter to this corrupt functionary from Sir Lloyd Kenyon, apologizing for not paying these damages on account of his poverty, and particularly alluding to a story generally circulated, that he went to Court in a second-hand suit of clothes, bought by him from Lord Stormont's *valet de chambre*. The whole composition is very pungent, but I can only extract a few sentences from it:

"The long and short of the matter is, that I am *wretched poor*—wretchedly so I do assure you in every sense and signification of the word. I have long borne the profitless incumbrance of nominal and ideal wealth. My income has been cruelly estimated at seven, or as some will have it, eight thousand pounds per annum. I shall save myself the mortification of denying that I am rich, and refer you to the constant habits and whole tenor of my life. The proof to my friends is easy. My tailor's bill for the last fifteen years is a record of the most indisputable authority. Malicious souls may direct you, perhaps, to Lord Stormont's *valet de chambre*, and vouch the anecdote that on the day when I kissed hands for my appointment to the office of Attorney General, I appeared in a laced waistcoat that once belonged to his master. I *bought* the waistcoat, but despise the insinuation ; nor is this the only instance in which I am obliged to diminish my wants and

apportion them to my very limited means. Lady K — will be my witness that until my last appointment I was an utter stranger to the luxury of a pocket handkerchief.¹

CHAP.
XLIII.

"You are possessed of the circumstances which render any immediate assistance on my part wholly out of the question. But better times may soon arrive, and I will not fail you then. The present Chief Justice of the King's Bench cannot long retain his situation, and I will now reveal to you a great secret in the last arrangement of judicial offices. Know, then, that Sir Elijah Impey is the man fixed upon to preside in the chief seat of criminal and civil jurisprudence. I am to succeed him in Bengal, and then we may set the malice of juries at defiance. If they had given Fox as many diamonds by their verdict as they have pounds, rest assured that I am not a person likely to fail you after I shall have been there a little while, either through want of faith or want of means. Set your mind, therefore, at ease. As to the money, why if Pitt is determined to have nothing to do with it, and if nobody will pay it, I think the most advisable thing in your circumstances will be to pay it yourself. The contents of this letter will prove that I mean to reimburse you when I am able. For the present, nobody knows better than yourself, not even Lady K —, how ill matters stand with me, and that I find it utterly impossible to obey the dictates of my feelings.

"Your very affectionate friend

"And humble servant,

"*Lincoln's Inn Fields, June 20, 1786.*

"L. K.

Sir Lloyd's efforts connected with the Westminster Scrutiny brought him into such trouble and discredit, that he wisely resolved wholly to renounce politics and to stick to his judicial duties. For these he felt he was well qualified, whereas he declared that "legislation was a task to which he by no means thought himself equal." Accordingly, although he retained his seat in the House of Commons several years longer, he

A.D. 1786.

1. I have heard Jekyll assert that "Lord Kenyon never used a pocket-handkerchief in his life till he found one in the pocket of this very waistcoat,—which pocket-handkerchief he ought to have returned, as it was not included in the bargain for the waistcoat."

CHAP.
XLIII.
A.D. 1787.

generally contented himself with a silent vote. However, he strenuously opposed a Bill for taking away the jurisdiction of the Ecclesiastical Courts in cases of defamation, which had been productive of much oppression to individuals and scandal to the church, and when asked to regulate, if he would not abolish, these proceedings, he said "he would not presume to blurt out his crude ideas of legislation, lest they should fail of success."¹

Feb. 7,
1788.

The last time of his addressing the House of Commons was in support of Sir Elijah Impey,² but he rather damaged the defence by his intemperance, and gave Mr. Burke and Mr. Francis a triumph over him.³

Kenyon as
an Equity
Judge.

Let us now attend him to the Rolls, where he appeared to much greater advantage. Being unable to read a single page of the Pandects, and being wholly unacquainted with the Roman civil law, even through the medium of translations and commentaries, he cannot be said to have been a great equity judge, but he

1. 25 Parl. Hist. 1384, 1403; 26 Parl. Hist. 1004-5-8.

2. Sir Elijah Impey (1732-1809), Chief Justice of Bengal. In 1772 he was counsel for the East India Company before the House of Commons, when the court of directors were heard at the bar in support of objections to a bill affecting their interests in Bengal. In the following year the regulating act for the government of India was passed (13-Geo. III. c. 63), and a supreme court of justice was established at Calcutta. Of this court Impey was appointed the first Chief Justice, on the recommendation, as he believed, of Thurlow, the Attorney General. He was knighted, and leaving for India by the *Anson* in April, 1774, landed in Calcutta on October 19. In 1789 Impey resigned his office. In the following year he entered the House of Commons as M.P. for New Romney. He retained his seat till the dissolution in 1796, but took little or no part in the debates; he practically retired from public life after 1792. In 1794 Impey settled at Newick Park, Sussex, where he engaged in farming, and occupied himself in educating his sons. Visiting Paris at the peace of Amiens, he was received in the best society of the time, but was detained, by order of the first Consul, after the rupture of the peace; he at length obtained a passport, and returned to Newick in July, 1804. He died at Newick October 1, 1809, and was buried in the family vault at Hammersmith.—*Dict. of Nat. Biog.*

3. 26 Parl. Hist. 1422-4.

was most familiarly acquainted with the practice and the 'doctrines of the Court of Chancery, he took very great pains with every case that came before him, and he despatched business with celerity and precision. He never seems to have written his judgments, and they cannot be praised for method, but they were very clear and generally very sound.

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XLIII.

The Reporters are Brown¹ and Cox,² and from them I extract a few of the most favorable specimens of his manner as Master of the Rolls. The question arose whether there ought to be a decree for the dissolution of a partnership, where one of the partners was so far disordered in his mind as to be incapable of conducting the partnership business according to the terms of the articles of co-partnership, although he could not be considered *non compos mentis*.³ As soon as the hearing of the cause was concluded, his Honor,

1. Brown's Rep. vols. i. and ii.

Brown is spoken of in the *Law Magazine*, vol. xx. p. 62, as a reporter of "singular inaccuracy." Mr. Sugden informs us that most of the cases in the notes to Brown are inaccurately reported ("Treatise on Powers," vol. ii. p. 280, 6th ed.). He cannot mean, however, I presume, to speak of many of those excellent notes of Mr. Eden and Mr. Belt, which give to us some most valuable cases, as in *Lloyd v. Collett*, vol. iv. p. 469. He refers, doubtless, to the cases in Brown's own notes.—*Wallace's Reporters*.

2. Cox's Cases, vols. i. and ii.

"Cases in the Court of Equity, from 1780 to 1796, inclusive, with a few of an earlier date, by Lords Hardwicke and Northington. ('The cases of a date antecedent to 1793, viz., those decided by Lord Hardwicke and Lord Northington, are, in general, such as have been cited or alluded to from the bench or the bar in the course of the argument of principal cases. They are stated from notes on which the author conceives he can safely rely, with the assistance of a reference to the Register's books.'—Preface.) By Samuel Compton Cox." Of the cases generally Chancellor Kent says that "they are neat, brief, and perspicuous reports, of unquestionable accuracy" (1 Commentaries, 495). A new and greatly improved edition was published in New York in 1824 under the superintendence of Murray Hoffman, Esq., one of the masters in chancery (Edns.: 2 vols., royal 8vo. 1816, 1824).—*Wallace's Reporters*.

3. "Insane."

CHAP. XLIII. without carrying the papers home with him or taking time to consider, spoke as follows:

"This point is a new one, and if I conceived any industry of mine would throw any light upon the subject, I would take time to consider of my opinion, but as I do not know of any authority to guide me, and as I have made up my mind as to what I ought to do, I shall give my sentiments now. I think it may be laid down that where partners are to contribute skill and industry as well as capital, if one partner becomes unable to contribute that skill, a Court of Equity ought to interfere for both their sakes; for both have stakes in the partnership, and are interested in having it carried on properly, and the Court ought to see that the property of the party unable to take care of himself should be taken care of for him. It appears that few people care to leave the management of their property to other persons; and as a lunatic has no power of managing his own property, so a Court of Equity will not deliver it to persons to whom the party himself has not committed it. If therefore this gentleman continues in the same state of derangement in which he has been, I should have no difficulty in saying that the partnership ought to be dissolved, though there may be no precedent for the purpose. If, as is alleged, he has clearly recovered his senses and there is no danger of a relapse, it would be too much to dissolve the partnership. Everybody knows that it is very frequent for persons once mad not to recover. I must therefore direct a new kind of inquiry, 'Whether Bennet is now in such a state of mind as to be able to conduct the business according to the articles of copartnership'; for if he has merely a ray of intellect, I ought not to reingraft him in his partnership, and that in mercy to both, for the property of both is concerned, and he who cannot dispose of his property by law, must be restrained."¹

Persons entitled to an estate under a will upon the contingency of James Baron dying without lawful issue, applied for a writ *de ventre inspiciendo*, under these circumstances. He had married his servant maid, who in three weeks after the marriage was delivered of a

1. *Sayer v. Bennet*, 1 Cox 107.

dead child, and he dying soon after, she alleged herself to be again pregnant, whereas there was great reason to believe that she intended to palm a supposititious child upon the world for the purpose of defeating the remainder man. Objection was made that the writ could only be granted to persons claiming by *descent*.

CHAP.
XLIII.

Master of the Rolls: "At the time when the writ was first framed, which was coeval with the common law, the nature of the claim now made could not possibly exist; there was no disposition by will. Therefore land could only be claimed by descent. But the language of the writ may be varied according to the exigency of the case. Now what is the exigency of this case?—that the persons entitled to the property should not be defeated by a supposititious child. Desinherison or *exheredatio* is not confined strictly to an heir. When there is *eadem ratio* there ought to be *eadem lex*. The question is, whether there be in this case circumstances sufficient to warrant me in granting the order? The situation and conduct of the wife may well alarm the parties interested. She was brought to bed in less than three weeks after the marriage, and doubts arising when soon after upon her husband's death she declared herself pregnant, she did not take proper measures to remove these doubts—which she should have done, if it were only for the sake of the child. I therefore clearly think that the writ should issue."¹

In *Halfhide v. Fenning* Sir Lloyd Kenyon pronounced a judgment which has been often overruled, but which I humbly apprehend rests on just principles. To a Bill for an account between partners, the defendant pleaded that by the articles of partnership it was stipulated that any disputes arising between them respecting matters of account should be referred to arbitration.

Q. How far
a covenant
to refer to
arbitration
may be
pleaded in
bar to a
suit or
action?

Master of the Rolls: "There can be no doubt but that parties entering into an agreement that all disputes shall be referred to arbitration, are bound by such agreement. The

1. *Ex parte Bellett*, 1 Cox 297.

CHAP. XLIII. Legislature has countenanced arbitrations by enacting facilities to enforce the performance of awards. Where a cause is referred by rule of the Court of King's Bench, with a clause that no Bill in Equity shall be filed, that Court, considering this clause legal, grants an attachment for the violation of it. Such references are very advantageous to the parties, as arbitrators are more competent to the settling of complicated accounts than the officers of Courts of law or equity. I ought to be convinced that arbitrators cannot or will not proceed before I entertain jurisdiction of the matter. I am satisfied that in the first instance recourse ought to be to those judges pointed out by the articles. If they cannot determine the controversy, they will remit it to this Court."¹

Sir Lloyd Kenyon's merits as an Equity Judge.

Although we shall in vain look in his judgments at the Rolls for such masterly expositions of the principles of equity as delight us in those of his successor, Sir William Grant,² and there were several of his decrees

1. 2 Brown 336. The maxim that Courts of Law and Equity are not to be ousted of their jurisdiction by the agreement of the parties arose at a time when the profits of judges depended almost entirely upon the number of suits tried before them. This mode of remuneration accounts for the decisions whereby the statutes made to discourage frivolous actions by depriving the plaintiffs of costs were long rendered abortive.—December, 1849.

I am glad to think that by judgments of the Court of Queen's Bench, and of the House of Lords, in which I took a part, the right of parties to provide for the settlement of their disputes by arbitration is now fully established.—January, 1857.

2. Sir William Grant was born at Elchies, County Moray, 1754. After completing his studies at King's College, Aberdeen, he entered Lincoln's Inn, but before being called to the bar was appointed Attorney General of Canada. Returning at the end of some years to England, he was called to the bar, and in 1790 was elected M.P. for Shaftesbury, and in the House of Commons soon distinguished himself as a powerful coadjutor of Mr. Pitt. Subsequently he sat as representative for Windsor and Banffshire. He was appointed Chief Justice of Chester, 1798; Solicitor General, 1799; Master of the Rolls, 1801. The latter office he held about sixteen years; and died May 25, 1832.—*Cooper's Biog. Dict.*

His parliamentary career was most distinguished. We quote the following from Foss's "Lives of the Judges," vol. viii., p. 299: "The impression which he made in parliament was wonderful. Few men have gained a greater ascendancy. Lord Brougham relates that even Mr. Fox felt it difficult to answer him, and that once, being

reversed, he despatched a great deal of business in a very creditable manner. Lord Eldon afterwards said to his son, "I am mistaken if, after I am gone, the Chancery Records do not prove that if I decided more than any of my predecessors in the same period of time, Sir Lloyd Kenyon beat us all." This compliment to Sir Lloyd Kenyon is well deserved, although the condition on which it is awarded cannot be affirmed, as Lord Eldon himself, in finally disposing of causes, was one of the slowest as well as one of the surest Judges who ever sat upon the bench.

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XLIII.

The distinguished Welshman was now to exhibit his judicial powers on a wider stage. Lord Mansfield having presided thirty years as Chief Justice of the Court of King's Bench, was disabled by age and infirmity from longer doing the duties of his office, and he anxiously desired that Mr. Justice Buller should be

Resigna-
tion of
Lord
Mansfield.

annoyed by some members talking behind him while he was listening to one of Sir William's speeches, he turned round and asked them sharply, 'Do you think it so very pleasant a thing to have to answer a speech like that?' The effect of his addresses are thus described at a later period: 'There was one extraordinary oration that night, Sir William Grant's; quite a masterpiece of his peculiar and miraculous manner. Conceive an hour and a half of syllogisms strung together in the closest tissues, so artfully clear that you think every successive inference unavoidable, so rapid that you have no leisure to reflect where you have been brought from, or to see where you are to be carried; and so dry of ornament, or illustration, or reflection, that your attention is stretched—stretched—racked. All this is done without a single note.' ('Memoirs of Francis Horner,' i. 285.) He participated in the prejudices which prevailed among judicial men of that period against any innovations of the law, and successfully opposed most of the beneficial alterations suggested by Sir Samuel Romilly's intellectual and comprehensive mind, which have since been adopted by the legislature. To Sir Samuel's amelioration of the criminal code, however, he gave a hearty support. Though grave and formal, and even cold in his manner, he had much enjoyment in social conviviality; and when in friendly intercourse with his eminent contemporaries, whether statesmen or judges, a few rounds of his favorite Madeira soon conquered his habitual taciturnity. He was fond of literature and poetry, and the publications of the day formed his relaxation from severer studies."—*Foss's Judges of England*.

CHAP.
XLIII.

appointed his successor. He intimated his willingness to resign if this arrangement should be acquiesced in. But it is said that the Prime Minister, when at the bar and going the Western Circuit, although Buller, the Judge of Assize, was very civil to him, had been much scandalized by observing his Lordship's demeanor in trying a great *Quo Warranto* case, which involved the right to return members of parliament for a Cornish borough, contested by his family; and it is certainly known that Mr. Pitt not only had a good opinion of Sir Lloyd Kenyon's moral qualities, but felt deep gratitude for the sacrifices that his Honor had made in qualifying himself to vote for Sir Cecil Wray by sleeping in his own stables, and in zealously defending the "Scrutiny." Lord Mansfield was therefore told that the Master of the Rolls would be recommended to the King as Chief Justice. The notion was particularly disagreeable to the aged Peer. He not only sincerely believed that his favorite was much better qualified, but he had been told that the rival candidate had sneered at some recent decisions of the King's Bench which tended to bring about a fusion of law and equity, and that he was accustomed, like the Sergeants celebrated by Pope, to

"Shake his head at Murray as a wit."

For two years, while shut up in his villa at Caen Wood, Lord Mansfield retained his office of Chief Justice, in the hopes that Buller's growing popularity, while *de facto* presiding as the first common law Judge in Westminster Hall, might bear down all opposition, or that there might be a change of ministry,—when his superior merit might be acknowledged and rewarded.

At last hints were thrown out that this retention of the office was an abuse of the statute which made judges irremovable, and that the power of removing,

reserved to the Crown on an address of the two Houses of Parliament, might be put in force for incapacity as well as for criminality. CHAP.
XLIII.

Accordingly, on the 4th day of June, 1788, Lord Mansfield signed his resignation, and on the 9th of the same month, being the last day of Trinity Term, 1788, Sir Lloyd Kenyon was sworn in as his successor. On the same day the new Chief Justice, by letters patent under the Great Seal, was created Baron Kenyon of Gredington, in the county of Flint. He sat at *nisi prius* immediately after, but he was not formally installed till the first day of the following Michaelmas Term. Sir Lloyd
Kenyon
appointed
Lord
Mansfield's
successor,
and raised
to the
peerage.
Nov. 7,
1788.

CHAPTER XLIV.

LORD KENYON AS CHIEF JUSTICE OF THE KING'S BENCH.

CHAP.
XLIV.
A.D. 1788.
Unpopu-
larity of the
appoint-
ment.

ALTHOUGH Lord Kenyon afterwards acquired the full respect both of the legal profession and of the public, his promotion was in the first instance much disrelished. The gibes of the Rolliad circulated in society; he had offended several barristers by his hasty and uncourteous manner, and there was an illiberal apprehension that, because he had practised while at the bar in a court of equity, he must be unfit to preside in a court of law. Buller, on the contrary, was not only "the Prince of Special Pleaders," and really had done the business of the King's Bench exceedingly well for two years, but he had been in the frequent habit of inviting all grades of the profession to the genial board, where they found flowing cups as well as flowing courtesy.

Lord
Kenyon
takes his
seat in the
House of
Lords.

As I am henceforth to speak of the new Chief Justice almost exclusively in his judicial capacity, it may be convenient that I should at once proceed to the notice which I am called upon to take of him as a politician. He was introduced into the House of Peers in his robes between Lord Sydney and Lord Walsingham on the 26th of June, 1788.¹ Of course he was a steady

1.

" June 26, 1788.

" Sir Lloyd Kenyon, Baronet, being, by Letters Patent bearing date the 9th June 1788, in the twenty-seventh * year of his present Majesty, created Baron Kenyon of Gredington, in the county of

* Sic.



LORD KENYON.

supporter of the Government, although he very properly abstained from again making himself prominent as a political partisan.

CHAP.
XLIV.

In a debate which soon after arose upon the insanity of George III., Lord Porchester, to enforce the necessity of immediately restoring the exercise of the royal authority by addressing the Prince of Wales to act as Regent, stated—

Jan. 23,
1789.
His speech
on the in-
sanity of
George III.

“That on Monday last two men had been butchered by a public execution, because the door of mercy was barred against them, and that these unfortunate convicts had been deprived of all opportunity of applying either for a pardon or for a temporary reprieve, although it had been laid down by Judge Blackstone that if a convict, after receiving sentence of death,

Flint, was (in his robes) introduced between the Lord Sydney and the Lord Walsingham (also in their robes), the Gentleman Usher of the Black Rod and Garter King at Arms preceding. His Lordship on his knee presented his Patent to the Lord Chancellor at the Wool-sack, who delivered it to the Clerk; and the same was read at the Table. His Writ of Summons was also read as follows (videlicet):

“‘George the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth: To Our right trusty and wellbeloved Counsellor Lloyd Kenyon, of Gredington, in Our County of Flint, Chevalier, greeting: Whereas Our Parliament for arduous and urgent Affairs concerning Us, the State and Defence of Our Kingdom of Great Britain, and the Church, is now met at Our City of Westminster; We, strictly enjoining, command you under the Faith and Allegiance by which you are bound to Us, that considering the Difficulty of the said Affairs and Dangers impending, all Excuses being laid aside, you be personally present at Our aforesaid Parliament with Us, and with the Prelates, Nobles, and Peers of Our said Kingdom, to treat of the aforesaid Affairs, and to give your Advice, and this you may in nowise omit as you tender Us and Our Honor, and the Safety and Defence of the said Kingdom and Church, and the Despatch of the said Affairs.

“‘Witness Ourselves at Westminster, the Ninth Day of June, in the Twenty-eighth Year of Our Reign.

“‘YORKE.’

“Then his Lordship took the Oaths, and made and subscribed the Declaration; and also took and subscribed the Oath of Abjuration, pursuant to the Statutes, and was afterwards placed on the Lower End of the Barons’ Bench.

“Garter King at Arms delivered in at the Table his Lordship’s pedigree, pursuant to the Standing Order.”—38 Journal, 249.

CHAP.
XLIV.

loses his senses, execution is stayed, because, if he had retained his senses, he might have urged some plea to induce the Crown to remit or to mitigate his punishment."

Lord Kenyon.—"It would ill become me to listen with silent indifference to a charge of so serious a nature, and urged with such vehemence against a judge. The judge who tried these criminals is now the party accused. If on the trial of a person convicted of a capital crime, circumstances come out which warrant the judge in supposing that the verdict is wrong, it is his duty to respite the convict. If anything favorable appeared on the trial of the two persons executed on Monday, the judge who tried them ought to have respited them; and if he neglected his duty, they have not been butchered but murdered by him, which is a much higher offence. The judge guilty of such an act of criminal neglect, instead of being allowed to go in state to Westminster Hall next morning, ought to have been seized in his fur robes, dragged from the seat of justice, and hurried to that dungeon in which the two unfortunate men had lingered the last hours of their existence. I therefore call upon the noble lord to make good his charge, to name the judge, and to bring the real culprit to condign punishment."

Lord Porchester.—"I bring no imputation on any judge. The judge who tried these two unfortunate prisoners is my own near relation, and a most honorable, enlightened, and humane magistrate. But because the evidence against them on their trial might appear quite sufficient, does it follow that they might not have good reason to apply for pardon or reprieve, and ought they to have been hurried out of the world, while, contrary to our laws and our constitution, the power of extending mercy to them was suspended?"

Lord Kenyon returned no answer; but I apprehend he might have said, that in truth the ministers of the Crown continued to exercise the powers of their several offices; that a pardon or respite if fit to be granted would have been directed by the Secretary of State as effectually as if the King had been in the full possession of his faculties.¹

1. 27 Parl. Hist. 1065.

By this maiden speech our Chief Justice did not make a favorable impression, and he was so little satisfied with it himself, that he never again opened his mouth in the House of Lords till the question arose whether the impeachment of Mr. Hastings¹ was abated

CHAP.
XLIV.
He maintains that Mr. Hastings' impeachment had abated by the dissolution of Parliament.
May 16, 1791.

1. Warren Hastings (*b.* 1732 *d.* 1818), the son of a Worcestershire gentleman, in 1750 went to Bengal as a writer in the service of the East India Company. Here he attracted the attention of Clive, and after Plassey, was appointed agent to the Nabob of Moorshedabad for the East India Company. In 1769 he became member of the council at Madras, and in 1772 was appointed Governor of Bengal. In this capacity he devoted himself to retrenchment and reform. Half the Nabob's allowance was cut off; Corah and Allahabad, the old cessions to the Mogul, were resumed on pretence of a quarrel, and sold to the Vizier of Oude for fifty lacs of rupees; the land tax was settled on a new basis, which produced more revenue with less oppression; and lastly, in his need for money, British troops were let to the Vizier of Oude for forty lacs of rupees, in order that that prince might be able to destroy his enemies, the neighboring tribe of Rohillas, and annex the province of Rohilcund. In 1773 Lord North's Regulating Act took effect, and Hastings became the first Governor General of India, with powers greatly limited by those of his council, three members of which, headed by Philip Francis, came out full of prejudice against Hastings, who therefore found himself powerless and in a perpetual minority. Nuncomar, a Brahmin, brought a charge of peculation against him. The rancorous eagerness with which the council took the matter up drove Hastings to desperate measures. Invoking the separate powers confided in the Supreme Court by the Regulating Act, he obtained the arrest of Nuncomar on a charge of forgery. Sir Elijah Impey, the Lord Chief Justice, proceeded thereupon to try, condemn, and hang Nuncomar. This bold stroke resulted in the complete triumph of Hastings over his enemies—rendered still more secure by the death of one of the triumvirate in the council, which enabled him to obtain a perpetual majority by means of his casting vote. Once secure in his power he turned his attention to the aggrandizement of the English power in India. Discovering that, owing to the quarrels between the other presidencies and the Mahrattas, war was inevitable, and that the latter were intriguing with the French, he determined to take the initiative, and crush the half-formed confederacy. The Bombay government embraced the cause of Ragonaut Rao Ragoba, a deposed Peishwa, and plunged into a war with the Mahratta regency, in which they were extremely unsuccessful, owing to bad generalship. Hastings sent Colonel Goddard with the Bengal army to accomplish a dangerous march across India, and in 1779 Goddard overran Guzerat, captured Ahmedabad, and, finding Scindiah disposed to delay and evasion, attacked and routed him

CHAP.
XLIV.

by the dissolution of parliament. Although so familiarly acquainted with every branch of our municipal law, he knew very little of the law of parliament, and it would have been better if on this occasion he had remained silent. He apologized for his defective information on the subject, as his professional engagements had prevented him from reading the Report of

April 14, 1780. Hastings, moreover, despatched another Bengal army to Malwa under Major Popham, who completed the defeat of Scindiah by capturing his almost impregnable fortress of Gwalior. Scindiah concluded a treaty with the English; and by his mediation peace was made between England and the Poonah government. In July, 1780, Hyder Ali overran the Carnatic and threatened Madras. Hastings immediately suspended Whitewell, the Governor of Madras; despatched all available troops to the Carnatic, gave the command to Sir Eyre Coote, and sent large sums of money. The victories of Coote in 1781 restored the English position. On the news of Hyder's advance in 1780 Hastings demanded troops and 50,000*l.* from Cheyte Sing, Rajah of Benares, a tributary of the English. On his delaying it was raised to 500,000*l.* This being unpaid, Hastings arrested Cheyte Sing, deposed him, and seized all his property. But the Governor General, being still in want of money, persuaded Asaf ud Dowlah, Vizier of Oude, to assist in robbing his mother and grandmother, the Begums of Oude. Hastings's internal administration was most successful. He dissolved the double government, and transferred the direction of affairs to the English. He created the public offices and service of Bengal. He organized the revenue for the first time on a definite basis. This, moreover, he effected from mere chaos, without any assistance, being on the contrary constantly trammelled by orders from home, and frequently borne down by a majority in council. Hastings remained at the head of affairs till 1785. By the time of his return peace was now restored to India; there was no opposition in the council; there was no European enemy in the Eastern seas. But in the meanwhile the feeling against him on account of some of his acts, and notably those connected with Oude and the Rohilla War, had been growing very strong at home. At the instance of some of the Whigs, at the head of whom was Burke, he was impeached by the House of Commons. The trial began Feb. 13, 1788, with Burke, Fox, and Sheridan as the principal managers for the Commons. The trial dragged for eight years, and in the end Hastings was acquitted (April 23, 1795). The rest of his life was passed peacefully in England. There is no doubt that Hastings was guilty of some of the worst acts imputed to him; but the surpassing greatness of the work he accomplished, in placing the English Empire in India upon a secure basis, may well have been suffered to outweigh his offences.—*Dict. of Eng. Hist.*

the Committee appointed to search for precedents. CHAP. XLIV. He then strongly took the side of *abatement*. "If dry legal reasoning," said he, "and a strict attention to forms of practice (on which substantial justice depends) be unpleasant to your Lordships, you had better not call on lawyers for their opinions, but either send them out of the House, or not allow them to babble here." In commenting on the opinion of Lord Hale, he fell into the mistake of asserting, "as an undoubted fact, that this great judge would never sit on a criminal case during the Commonwealth, because he doubted the authority of Cromwell," whereas Hale undoubtedly took the oath to the Republican Government, and, till he had a difference with the Protector, tried criminal as well as civil cases without any scruple. Good sense prevailed and the quibble of *abatement* was crushed by a majority of 60 to 18.¹

Lord Kenyon strongly opposed the Bill to prevent July 3, 1789. vexatious suits for small tithes, saying that "he could not consider it any oppression that persons should be imprisoned for sums as low as one shilling, for if any were so obstinate as to refuse the payment of legal dues, the law ought to be enforced. He, therefore, would not concur in pulling down a fabric which had stood so many years, and which was the chief support of the inferior clergy."²

Our Chief Justice next came forward to oppose Mr. April, 1792. Fox's Libel Bill, which *declared* that juries had a right He opposes Mr. Fox's Libel Bill. to determine whether the writing charged to be libellous is of an innocent or criminal character. "He expressed his dislike of the loose and vague manner in which the Bill was worded. He pronounced its principle to be a direct contradiction to the practice of a long series of years, and that it was totally inadequate

1. 29 Parl. Hist. 535.

2. 28 Parl. Hist. 218.

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XLIV.

to the purpose it was meant to effect. It tended to alter the established law of the realm, and was a dangerous innovation upon the constitution. The only doubt was whether the truth should be taken as part of the defence, and if this Bill were to pass, a clause to determine that point would be absolutely necessary. He thought the Judges the only men who could give the necessary information, and he should move that the following questions be put to them: '1. On the trial of an indictment for libel, is the criminality or innocence of the paper set forth as the libel matter of fact or matter of law? 2. Is the truth or falsehood of the paper material, or to be left to the jury on a trial?'

Questions
proposed
by him for
the opinion
of the
Judges.

The two questions were referred to the Judges, who unanimously answered that "it was for the Court alone, and not for the jury, to determine whether the paper charged to be a libel was criminal or innocent," and "that proof of the truth could not be admitted; nay, that the doctrine for excluding it was so firmly settled and so essentially necessary for the maintenance of the King's peace and the good order of society, that it cannot be drawn into debate."¹

Lord
Stanhope's
speech to
banter
Lord
Kenyon.

On the motion for the second reading of the Bill, Lord Camden and Lord Loughborough still advised the House to pass it; but it would appear that Lord Kenyon would have remained silent had not Lord Stanhope² made some observations which he supposed

1. 29 Parl. Hist. 1361.

2. Charles Stanhope, the third Earl Stanhope, grandson of the first earl, was born Aug. 3, 1753. He received the early part of his education at Eton, and completed it at Geneva, where he applied himself chiefly to mathematics, in which he made so great a progress as to obtain a prize from the society of Stockholm for a memoir on the construction of the pendulum. In 1774 he stood candidate for Westminster, but without success. By the interest of the Earl of Shelburne, however, he was brought into parliament for the borough of Wycombe, which he represented till the death of his father, in

reflected upon him. This eccentric Peer not only found fault with the direction given to the jury at the famous trial of the *King v. Stockdale*, but, to illustrate the injustice which might be done by referring the question of "libel or no libel" to the Judges instead of the jury, put the case of there being an indictment for an alleged libel, in denouncing the prosecution as "a great bore."

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XLIV.

"If referred to the jury," said his Lordship, "they would immediately say, 'This is no imputation on moral character. We who attend in courts of justice know well that a person may be a *great bore* who is very desirous of discharging his duty, and is only very narrow-minded, dull, and tedious. Therefore we find a verdict of *not guilty*.' But if treated as a mere question of law, the Judges would say, 'We read nothing in our books of a *bore* so spelt. Lord Coke says, 'the spelling of words signifieth naught.' We must consider that the libel denounces the prosecutor as a *great boar*. Now Manwood de Foresta lays it down that 'a *boar* is a beast of chase of an evil and ungovernable nature, the which it is lawful to follow and to kill.' Now, whereas the libel avers that the prosecutor is 'a great boar,' we must take this *in mitiori sensu*, and suppose the charge to be, not that the prosecutor actually *is* a great boar, but only that he has the qualities of a great boar. But these render him unfit for society as much as if he were infected with certain disorders, to impute which is libellous

1786, called him to the Upper House. He distinguished himself at an early period of the French Revolution by an open avowal of republican sentiments, and went so far as to lay aside the external ornaments of the peerage. He was also a frequent speaker, and on some occasions was left single in a minority. As a man of science he ranked high, and was the author of many inventions, particularly of a method of securing buildings from fire, an arithmetical machine, a new printing-press, a monochord for tuning musical instruments, and a vessel to sail against wind and tide. He was twice married—first to Lady Hester Pitt, daughter of the great Earl of Chatham, by whom he had three daughters; and secondly to Miss Grenville, by whom he had three sons. He died Dec. 16, 1816. He published some philosophical pieces and a few political tracts. His daughter, *Lady Hester Lucy Stanhope*, quitting her family and connections in Europe, retired to Syria, and died at her villa of d'Joun, on Mount Lebanon, June 23, 1839, aged 63.—*Cooper's Biog. Dict.*

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and actionable. A 'great boar' is as much as to say a 'wild boar,' which may lawfully be slain by those whom it attacks, even in the purlieu of a royal forest. Therefore we hold the defendant to be guilty, and we sentence him to be hanged."

Lord
Kenyon's
answer.

Lord Kenyon : "After the unprovoked attack that has been made upon me, I must appear the meanest of mankind in your Lordships' estimation if I do not endeavor to defend myself. Every man cannot command the great abilities and the great eloquence which have been exhibited here this day ; but there is one thing in every man's power, viz., *veracity*. The noble Earl, instead of seeking to obtain true information, chooses rather to attack me on false facts. In *Stockdale's Case*, Mr. Erskine expressed himself quite satisfied with my direction, and I entirely approved of the verdict. The noble Earl has tried to cover with ridicule all that is held sacred. I honor trial by jury as much as any man ; but let the jury be confined to their proper province, the trial of facts. I conjure your Lordships, therefore, to let the law remain as it is, with all its guards and fences about it. A man sitting on the bench suffers many an uneasy moment, and is obliged to consult his conscience to enable him to do his duty. Great are the advantages from the question of *libel or no libel* remaining exclusively with the Judges. If a man were indicted for publishing a paper which inculcated virtue and loyalty, instead of vice and sedition, I would not direct the jury to find a verdict against such a defendant. Cases have occurred where the jury have found the defendant *guilty*, and the Judges have stepped in and rescued him. As for the noble Earl to dabble in law, as he has attempted, it is as preposterous as if I were to quote Sir Isaac Newton's *PRINCIPIA*, or to go into a dissertation on Euclid's Problems.¹ The noble Earl's speech deserves no other notice, for instead of being proper for your Lordships to hear, it was rather calculated to inflame the lowest dregs of the people and to put them out of humor with the public administration of justice."²

However, from the noble support given to the Bill by Mr. Pitt's government it passed, and it has operated

1. Sic. He seems to have thought it great presumption for a lawyer to pretend to have crossed the *Pons Asinorum*.

2. 29 Parl. Hist. 1294, 1431.

most beneficially. Thanks to the liberality of a succeeding age another Bill has passed, admitting evidence of the truth of the charge ;—and this too has greatly promoted “the King’s peace and the good order of society,” which the Judges said the mere mention of such a measure would fatally subvert.¹

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For the five following years, perhaps the most interesting in our Parliamentary annals, Lord Kenyon appears never to have opened his lips in the House of Peers, and I find him only once more addressing this assembly, although he very regularly voted or gave his proxy in favor of the Government.

Lord Moira² had brought in a Bill to abolish imprisonment for debt. Among other petitions in favor of the Bill there was one detailing the abuses supposed to prevail in the King’s Bench prison, and asserting that from the sale of beer and spirits to the debtors large profits were derived by the Lord Chief Justice. The noble Lord who introduced the Bill declared that he believed that these charges were false and calumnious.

Charge that he made a pecuniary profit by the abuses in the King’s Bench Prison.

Lord Kenyon, rising with evident agitation, spoke as follows :—

March 27,
1797.

“ My Lords, when I came down to the House this day I did not know whether I should not be dragged to your Lordships’

1. Lord Campbell’s Libel Bill, 6 & 7 Victoria, c. 96.

2. Hastings (Francis Rawdon), Marquis of Hastings, the eldest son of the Earl of Moira, was born in 1754. He took part in the battle of Bunker Hill in 1775, and became adjutant general in 1778. In 1781 he defeated the Americans at Camden, South Carolina. In 1783 he was raised to the peerage as Baron Rawdon, and in 1793 succeeded his father as Earl of Moira. He fought as major-general against the French in Flanders in 1794. On the formation of a Whig ministry in 1806 he was named master general of the ordnance. From 1813 to 1823 he held the office of Governor General of India, and maintained war against Mahrattas and Goorkas. His administration, on the whole, was accounted prosperous, and his policy liberal. In 1816 he was created Viscount Loudoun, Earl of Rawdon, and Marquis of Hastings: In 1824 he was appointed Governor of Malta. Died in 1826.—*Thomas’ Biog. Dict.*

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bar as a criminal. I beg your Lordship's indulgence, therefore, while I express my injured feelings. It is most true that the vile charge against me alluded to by the noble Lord has excited my grief and indignation. Who would have supposed that there was a single man in the kingdom base enough to believe me guilty of such misconduct, and barefaced enough to put such an accusation upon paper? Although I am not now upon my oath I speak under a sense of the duty I owe both to God and man, and I take this opportunity of solemnly declaring, as I hope for salvation at the day of judgment from that all just and benevolent Being to whom I am to answer for my conduct in this life, that every syllable of the accusation is utterly false. I have never received any profit or emolument from the abuses which have been mentioned, yet a slanderer asserts that they were for my profit and emolument sanctioned by me in my judicial capacity, and I am represented as avariciously sharing the plunder with gaolers, turnkeys, and tipstaves. Under my present feelings I most earnestly beseech and implore your Lordships to appoint a committee to inquire into my conduct, and I pledge myself to adduce evidence before that committee to prove what I now solemnly aver. But for the public good I am clearly of opinion that imprisonment for debt should continue. I insist that the law of arrest, as it now prevails, has conduced in an essential degree to the increase of commerce and the extension of trade. The most serious consequences would follow if the security which it offers to the creditor were weakened. It is impossible altogether to prevent abuses, but when they come to my knowledge they shall never be countenanced, nor the authors of them suffered to go unpunished." ¹

The Bill was thrown out by a majority of 37 to 21, and did not pass till above forty years afterwards, when I had the honor to re-introduce it.

Lord
Kenyon's
improved
tactics in
self-
defence.

Henceforth Lord Kenyon, when attacked, instead of defending himself in debate in the House of Lords, "changed the venue" to the Court of King's Bench, where he could both indulge in a little self laudation, and retaliate upon his accusers without any danger of a reply.

1. 33 Parl. Hist. 181.

He never brought forward any Bill for the amendment of the law, nor did he even attend to the judicial business of the House of Lords. This cannot be celebrated as a very glorious Parliamentary career. Indeed if a Chief Justice of the King's Bench is to do so little for the public as a peer, there seems no reason why he should be ennobled. His official rank is abundantly sufficient to insure respect to a man of character and ability, and a peerage is conferred upon him, not that he may frank letters or walk in a procession, but that he may assist in the supreme Court of Appeal for the empire, and, as a legislator, he may strive to improve our laws and institutions.

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I am much pleased that we are now to see Lord Kenyon presiding on his tribunal in Westminster Hall. Here he appeared to infinitely greater advantage. Although not free from considerable defects, in spite of them he turned out to be a very eminent common law Judge. His thorough acquaintance with his craft, his intuitive quickness in seeing all the bearings of the most complicated case, and his faculty of at once availing himself of all his legal resources, gave him a decided advantage over competitors who were elegant scholars, and were embellished by scientific acquirements. He had a most earnest desire to do what was right; his ambition was to dispose satisfactorily of the business of his Court, and to this object he devoted his undivided energies.

His judicial
character.

However, the misfortune of his defective education now became more conspicuous, for he had not acquired enough general knowledge to make him ashamed or sensible of his ignorance, and without the slightest misgiving he blurted out observations which exposed him to ridicule. He was particularly fond of quoting a few scraps of Latin which he had picked up at school, or in the attorney's office, without being aware of their lit-

His Latin
quotations.

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eral meaning. In addition to the "modus in rebus," he would say, that in advancing to a right conclusion, he was determined *stare super antiquas vias*,¹ and when he declared that there was palpable fraud in a case, he would add "apparently *latet anguis in herba*."² At last George III., one day at a levee, said to him, "My Lord, by all I can hear it would be well if you would stick to your good law and leave off your bad Latin," but this advice, notwithstanding his extraordinary loyalty, he could not be induced to follow.

His bad
temper.

A more serious obstacle to the dignified discharge of his judicial duties arose from his hasty and ungovernable temper. He is said to have surprised his friends for a few weeks after taking his seat as Chief Justice with a show of courtesy, but he soon gave up the unequal contest, and his brother Judges, the bar, and the solicitors were by turns the victims of his

Account of
his de-
meanor in
Court by
Espinasse.

choler. We have the following account of his demeanor in Court from a barrister who practised under him all the time he was Chief Justice:

"The supercilious reception which he gave to the opinions of the other Judges was not that merely of neglect, it bordered on contempt. He predominated over them with high ascendancy. They very rarely differed from him; if they did, their opinions were received with a coldness which stooped not to reply, or, if noticed, were accompanied with angry observation. He was irritated by contradiction, and impatient even of an expression of doubt of the infallible rectitude of what he had delivered as his judgment. In differing with his predecessors he used no soft or measured language. Having occasion to contravene a dictum of Chief Justice Holt, 'he wondered that so great a Judge should have descended to petty quibbles to overturn law and justice'; and when a saying of Lord Mansfield was cited respecting the right to recover

1. "To stand upon old ways"; *i.e.*, to be attached to old customs.

2. "A snake lies hidden in the grass."

a total loss on a valued policy, with a small interest actually on board, he declared that 'this was very loose talking, and should not be ratified by him.' When a new trial was moved for against a ruling of his own, on the ground of mis-direction, he would scarce give time to his colleagues to deliberate together, but at once burst out, 'If the rest of the Court entertain any doubt the case may be farther considered, but I am bound to give the same opinion I formerly gave—not because I gave that opinion before, but because I am convinced by the reasoning that led to it.' Whenever his brother Judges ventured to differ from and overrule his decisions (there were scarcely a dozen cases in the course of fourteen years which called for this exhibition of fortitude), his manner evinced as much testiness as if he had received a personal affront. If a word escaped from a counsel not quite in accordance with his sentiments, his temper blazed into a flame which could scarcely be subdued by humility. On these occasions he gave loose to an unchecked effusion of intemperate expression, and his language was not chastened by the strict rule of good breeding. Mr. Law, when leader of the Northern Circuit, having moved rather pertinaciously for a new trial, Lord Kenyon thus concluded his judgment—'You will take nothing by your motion but the satisfaction of having aired your brief once more.' Nor while thus offensive to those more advanced in the profession could he claim as a set-off the merit of being gracious and encouraging to the junior portion of the bar. An irregular application, though it proceeded from inexperience only, was received without the indulgence which was due to it; if made by the more experienced it was received with contumely. He would say, "You know you cannot succeed. You do not expect to succeed."

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A graver fault was his indulging in partialities for and antipathies against particular barristers. Erskine was his pet—he delighted to decide in favor of this popular advocate, and when obliged to overrule him he would give his head a good-natured shake, and say with a smile, "It won't do, Mr. Erskine, it won't do." Law, on the contrary, was so snubbed by him, that at last he openly complained of his constant hostility in the well-known quotation:

His partialities
and antipathies.

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"Non me tua fervida terrent
Dicta, ferox [pointing to Erskine]; Di me terrent,—
[Pointing to the bench]—et JUPITER *hostis*." ¹

George
III's con-
gratulation
to him on
the loss of
his temper.

Such was the general opinion respecting the infirmity of his temper that the following anecdote was circulated and believed, although the epigrammatic point and the rudeness which it imputes to George III. were equally at variance with the character of that royal personage: "Lord Kenyon being at the levee soon after an extraordinary explosion of ill humor in the Court of King's Bench, his Majesty said to him, 'My Lord Chief Justice, I hear that you have lost your temper, and from my great regard for you I am very glad to hear it, for I hope you will find a better one.'"

His anxiety
for the
rights of
the "legal
estate."

All these failings, nevertheless, were much more than counterbalanced by his professional learning, his energy, and his probity, so that he was not only admired by common jurymen who were on a level with him as to general acquirements, and with whose feelings and prejudices he sympathized, but his brother Judges, in all the Courts at Westminster, owned his superiority, the bar succumbed to his despotic sway, and the public, while they laughed at his peculiarities, confided in him and honored him. I can hardly point out any principle on which he openly professed to differ from his predecessor, except the rigid enforcement of the rule, that in the possessory action of ejectment the *legal estate* shall always prevail. Lord Mansfield had not only very properly decided that the tenant may not dispute the title of the lessor under whom he occupies, and that satisfied terms may be presumed to be surrendered, but in some cases he had gone farther, and held where there was no estoppel, that unsatisfied out-standing terms should not bar an ejectment if the party bringing

1. "Your violent language does not frighten me, fierce though you are—only the gods terrify me—and Jupiter, my enemy."

the ejectment would agree to recover, and to hold the premises subject to the uses of these terms.¹ But Lord Kenyon overruled Buller, who followed the doctrine of Lord Mansfield,—and, supported by Ashurst and Grose, held that a court of law was wholly incompetent to consider *trusts*, and, there being no estoppel, that an outstanding term, if there was no sufficient ground for presuming it to be surrendered, was universally a complete bar to the ejectment.²

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He likewise induced the Court to hold against a decision of Lord Mansfield, that an action cannot be maintained in a court of law for a pecuniary legacy, although the executors have assets in their hands from which it might be paid, as a Court of Equity has the means of determining such questions much more satisfactorily, and of doing justice to all who may be interested in the fund.³ With still more doubtful policy he overturned some decisions of Lord Mansfield respecting actions by and against married women separated from their husbands by a divorce *a mensa et thoro*, or under articles of separation with property settled upon them, or where they had declared themselves to be, and had acted as single women, the rule being now laid down that a married woman cannot bring an action or be impleaded as a *feme sole* while the relation of marriage subsists,—although the common law furnished the analogy of a married woman acquiring a separate character by the exile of her husband, or by his entering into religion.⁴

His decision that no action at law can be maintained for a legacy.

Rule that a married woman shall never be permitted to sue or to be sued as a single woman.

I am not aware of any other decisions to justify the

1. Doe dem. *Bristow v. Pegge*, 1 T. R. 758 n.

2. Doe dem. *Hodsdon v. Staple*.

3. *Deeks v. Strutt*, 5 T. R. 690.

4. *Marshall v. Rutton*, 8 T. R. 545. One of the most remarkable instances of an action by a married woman is that by Lady Belknappe (wife of the Lord Chief Justice), when her husband had been transported to Ireland.

CHAP. XLIV. oft-repeated assertion that "Lord Kenyon restored the simplicity and rigor of the common law."¹

I shall now proceed to mention some of the most remarkable cases which came before him as Chief Justice of the King's Bench.

Dec. 9,
1789.
His beha-
vior on
the trial
of *Rex v.*
Stockdale.

Soon after his elevation, he tried the famous *ex-officio* information of *Rex v. Stockdale*, the prosecution having been ordered by the House of Commons for a supposed libel upon that assembly, in the shape of a defence of Mr. Hastings. The Chief Justice's direction to the jury on this occasion was wholly unexceptionable; but considering that the Bill had not yet passed declaring the right of juries to judge of the character and tendency of papers charged as libellous, as well as the act of publication, I am quite at a loss to reconcile his direction with the opinion he peremptorily gave in the House of Lords, and often repeated afterwards, that "libel or no libel" was a pure question of law, to be decided by the Court. He had strongly sided with the defenders of Hastings, and very much approved of the sentiments which the prosecuted pamphlet expressed,—thinking that the House of Commons had been guilty of oppression and vexation in the manner in which they had instituted and conducted the impeachment. Perhaps his wish for an acquittal might have unconsciously biassed his judgment. But, however this may be, he distinctly told the jury that they were to consider whether the sense which the Attorney General had affixed to the passage set out in the information was fairly affixed to them. According to the old doctrine, the jury were to consider whether the innuendoes in the information were made out, such as that "H—— of C——" meant *House of Commons*, or that

1. The observation would have been more just, that "he successfully resisted Lord Mansfield's attempts to bring about a fusion of Law and Equity."

"the K——" meant *our Sovereign Lord the King*, and nothing further. But here the Lord Chief Justice Kenyon said:

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"You must make up your minds that this was meant as an aspersion upon the House of Commons, and I admit that you are not bound to confine your inquiry to those detached passages which the Attorney General has selected as offensive. But let me, on the other side, warn you that though there may be much good writing, good argument, morality and humanity in many parts of it, yet, if there are offensive passages, the good part will not sanctify the bad part. You have a right to look at the whole book, and, if you find the passages selected by the Attorney General do not bear the sense imputed to them, the defendant has a right to be acquitted, and God forbid he should be convicted. You will always be guided by this—that where the tendency is ambiguous and doubtful, the inclination of your judgment should be on the side of innocence. It is not for me to comment further upon the pamphlet: my duty is fulfilled when I point out to you what the questions are proposed for your determination; the result is yours, and yours only."

The jury, after two hours' deliberation, found a verdict of NOT GUILTY; but, according to the doctrine laid down unanimously by the Judges in the House of Lords, the defendant ought certainly to have been convicted; for the act of publication was admitted, and the technical *innuendoes* were proved; so that the acquittal proceeded upon the ground that the intention of the pamphlet was fairly to discuss the merits of the impeachment, not to asperse the House of Commons, or, in other words, that the pamphlet was not a libel, the jury, with the consent of the Judge, having exercised the power afterwards conferred on juries by Mr. Fox's Libel Bill.¹

When the French Revolution broke out, and the reign of terror began in England, I am sorry to say

1. 22 St. Tr. 237-308.

CHAP.
XLIV.
His severe
sentences
in prosecu-
tions for
alleged
sedition.

that Lord Kenyon strongly abetted the system of repressing Jacobin principles by ill-advised prosecutions and cruel punishments, rather than by amending our laws and by the mild and dignified administration of justice. The first case which came before him, arising out of the revolutionary movement, was an *ex officio* information by the Attorney General against Dufleur and Lloyd, two prisoners confined for debt in the Fleet Prison, charging them with a conspiracy to escape and to subvert the Government, because they had affixed upon the gate of the prison a paper containing the following ADVERTISEMENT :

Pasquinade
against im-
prisonment
for debt.

"This House to Let ; peaceable possession will be given on or before the 1st of January, 1793, being the commencement of the first year of liberty in Great Britain."

This pasquinade against imprisonment for debt, composed for the amusement of the debtors, the Chief Justice gravely treated as a seditious libel ; and the defendants, being found guilty, were sentenced to stand in the pillory.¹

John
Frost's
case.

The trial and punishment of John Frost, the attorney, were still more discreditable. While in a 'coffee-house, under the excitement of wine, he was overheard to use some indiscreet expressions respecting the French Republic and a monarchical form of government. Notwithstanding an admirable defence by Erskine, he was found guilty of sedition, and the senior Puisne Judge having pronounced sentence "that he should be imprisoned six months in Newgate, that he should stand on the pillory at Charing Cross, and find sureties for his good behavior for five years," Lord Kenyon, C. J., added, with great eagerness, "and also be struck off the roll of attorneys of this Court," whereby he was to be rendered infamous and to be

irretrievably ruined, so that death really would have been a milder sentence.¹ CHAP.
XLIV.

The next political case which came before him was remarkable as being the first prosecution for libel under Mr. Fox's Libel Bill, and to the Chief Justice's shame it must be recorded that he misconstrued and perverted this noble law,—establishing a precedent which was followed for near half a century to the manifest grievance of the accused.

An information was filed by the Attorney General Rex v.
Perry,
A D. 1793. against the proprietor and printer of the "Morning Chronicle" for publishing in that journal certain resolutions of a public meeting held at Derby in favor of parliamentary reform and against abuses in the government, based upon this principle: "That all true government is instituted for the general good, is legalized by the general will, and all its actions are or ought to be directed for the general happiness and prosperity of all honest citizens."

Lord Kenyon (to the Jury): "A great deal has been said by the counsel for the defendants about parliamentary reform. Before I would pull down the fabric or presume to disturb one stone in the structure I would consider what those benefits are which it seeks. I should be a little afraid that when the water was let out, nobody could tell how to stop it; if the lion was once let into the house, who would be found to shut the door?—The merits or demerits of the late law respecting the trial of libel I shall not enter into. It is enough for me that it is the law of the land, which by my oath I am bound to give effect to, and it commands me to state to juries what my opinion is respecting this or any other paper brought into judgment before them. When these resolutions appeared in the newspaper of the defendants the times were most gloomy—the country was torn to its centre by emissaries from France. It was a notorious fact—every man knows it—I could neither open my eyes nor my ears without seeing and hearing them. Weighing thus all the circumstances—that the paper was pub-

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Perversion
of the
clause in
the Libel
Bill ena-
bling the
Judge to
give his
opinion to
the Jury on
matter of
law.

lished when those emissaries were spreading their horrid doctrines; and believing there was a great gloominess in the country—and I must shut my eyes and ears if I did not believe that there was;—believing also that there were emissaries from France wishing to spread the maxims prevalent in that country in this,—believing that the minds of the people of this country were agitated by these political topics of which the mass of the population never can form a true judgment, and reading this paper, which appears to be calculated to put the people in a state of discontent with everything done in this country,—*I am bound by my oath to answer that I think this paper was published with a wicked, malicious intent to vilify the Government and to make the people discontented with the constitution under which they live.*—This is the matter charged in the information;—that it was done with a view to vilify the constitution, the laws, and the government of this country, and to infuse into the minds of his Majesty's subjects a belief that they were oppressed, *and on this ground I consider it as a gross and seditious libel.* It is not sufficient that there should be in this paper detached good morals in part of it unless they give an explanation of the rest. There may be morality and virtue in this paper; and yet, apparently *latet anguis in herba*. There may be much that is good in it, and yet there may be much to censure. I have told you my opinion. Gentlemen, the constitution has intrusted it to you, and it is your duty to have only one point in view.—Without fear, favor, or affection, without regard either to the prosecutor or the defendants, look at the question before you, and on that decide on the guilt or innocence of the defendants."

The Act of Parliament¹ only required the Judge to deliver his opinion in point of law to the jury on the trial of libel "in like manner as in other criminal cases," and therefore he was only bound to tell the jury that if from the contents of the paper and the circumstances under which it was published it was meant to vilify the government and constitution and to infuse discontent into the minds of the people, it was in point of law a

1. 32 Geo. III. c. 60, s. 2.

libel, without taking upon himself as a matter of fact to determine that such was the intent.¹

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The jury, after two hours' deliberation, found a verdict of GUILTY OF PUBLISHING, BUT WITH NO MALICIOUS INTENT; and being told that this verdict could not be received,—after sitting up all night, they next morning returned a general verdict of NOT GUILTY.²

When it was resolved to charge Hardy, Horne Tooke, and other reforming associates of Mr. Pitt with the crime of high treason because they had steadily and zealously adhered to the cause which he had deserted, the plan at first was that they should be tried before Lord Kenyon in the Court of King's Bench; but some apprehension was entertained of his intemperance of manner, and they were arraigned at the Old Bailey before that quiet and safe Judge, Chief Justice Eyre.³

1. I myself heard a succeeding judge say, "The Act requires me to declare to you my opinion in point of law, and I am clearly of opinion that this is a most wicked, seditious, and diabolical libel."

2. *Rex v. Perry and Lambert*, 22 St. Tr. 953-1020.

3. James Eyre was born in 1733, and his father is described in the Lincoln's Inn books as Mr. Chancellor Eyre. Having received his classical education first at Winchester and then at Oxford, he commenced his legal studies at Lincoln's Inn in November, 1753, but two years after removed to Gray's Inn, by which society he was called to the bar in 1755. He purchased the place of one of the four city pleaders of London, and was for some time little known beyond the Lord Mayor's and Sheriffs' Courts. In them, however, his attendance was so regular, his manners so good, and his appearance so grave, that in February, 1761, he was appointed deputy recorder, and in April, 1763, recorder of the corporation, being then scarcely thirty years of age.

In the December of that year he was engaged as second counsel for John Wilkes in the action against Mr. Wood for entering into the plaintiff's house and seizing his papers under a general warrant from the secretary of state. Though he acted in this case with great energy and spirit, as thinking that it affected the liberty of the subject, yet, when a few years after, in 1770, the corporation, joining in the political distractions, excited by the cry of "Wilkes and Liberty," and the call for a new parliament, voted a remonstrance to the King, the recorder would not attend on its presentation; but on another address in harsher terms being voted, he boldly protested against it

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A.D. 1796.
Stone is
tried for
treason
before Lord
Kenyon.

But William Stone, the London merchant, who was very fairly and constitutionally accused of "adhering to the King's enemies" by writing letters inviting the

as a most abominable libel, and again refused to accompany the corporation to the palace. This was the occasion when Lord Mayor Beckford is supposed to have replied to his majesty in the speech that appears at the foot of his statue in Guildhall, but the language of which is said to have been subsequently composed by Horne Tooke. The common council of course resented their recorder's resistance, and voted that he should no more be advised with or employed in the city affairs, he "being deemed unworthy of their future trust and confidence." But the court of St. James's looked upon his conduct in a different light, and took an early opportunity of rewarding his loyalty by raising him to the bench of the Exchequer in October, 1772, when he was knighted. On resigning the recordership he received the thanks of the Court of Aldermen for the many eminent services he rendered the public, and was presented with a piece of plate with the city arms engraved thereon, as a grateful remembrance from the court for his faithful discharge of his duties.

After sitting in the Exchequer as a puisne baron for nearly fifteen years, he was raised to the head of it on January 26, 1787; and when Lord Chancellor Thurlow was removed, in 1793, he was appointed chief commissioner of the Great Sella, an office which he held for seven months, from June 15 to January 28 in the following year. On retiring from the Seal he was promoted to the chief justiceship of the Common Pleas, and at the end of the next year he was entrusted with the arduous duty of presiding at the memorable trials of Hardy, Horne Tooke, and Thelwall for constructive high treason. These trials lasted eighteen days, and throughout them he acted with the greatest patience and impartiality, but in the opinion of many with too great forbearance to the irregularities of Horne Tooke. In his summing up of the evidence in the different cases he carefully described the principles of the law, and in the most fair and unexceptionable manner explained the bearings of the evidence upon the charges. The result was the acquittal of all the prisoners; and the same verdict was given in 1796 in another trial before him of Crossfield and others for high treason in conspiring to make an instrument from which to shoot a poisoned arrow at the King. (*State Trials*, iv., v., vi.)

With an extensive knowledge of law he united the greatest judicial qualities; and to the unbiased integrity of the judge was joined a quickness of apprehension and a natural sagacity and candor that secured to him the respect and esteem as well of his brethren on the Bench as of the members of the bar, whom he never interrupted in their arguments, and towards whom he preserved an inviolable and unaffected courtesy. He presided over the Common Pleas six years and a half, and died on July 6, 1799, at his residence, Ruscombe in Berkshire.—*Foss's Lives of the Judges*.

French to invade England, was tried at the King's Bench bar; and the case being quite unconnected with Parliamentary reform or party politics of any sort, Lord Kenyon presided on this occasion with great moderation. He thus laid down the law :

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"If a communication is made to a government at war with England which may tend to be of any assistance to that government in annoying us or defending themselves, such communication is beyond all controversy high treason. It will be for the jury to look at the papers given in evidence, and consider whether they were meant to assist the French in the invasion of this country. This is what upon my oath I am bound to state to you; if I misstate it, I shall be corrected by the learned Judges who sit near me; and I shall not be sorry to be interrupted if I state anything which renders interruption necessary, because it never comes too late when the blood of a fellow-subject is at stake; but I am bound to do it: it is not a pleasant task; but, thus circumstanced, unpleasant as the task is to any man of feeling, I must meet my situation and summon up my fortitude as well as I can to discharge it as well as my faculties will permit me."

The letters were very culpable, but Erskine raised a doubt in the minds of the jury whether they had been written with any treasonable intent, and after long deliberation there was a verdict of *not guilty*.¹

When the trial came on of the very foolish prosecution moved by the Whigs in the House of Commons against John Reeve, for a libel on the English constitution, because he had written that "monarchy is the trunk from which the two Houses of Parliament had sprung as branches," Lord Kenyon thus rather boastfully paraded his constitutional learning :

May 20,
1796.
Trial of
John Reeve
for a libel
on the
House of
Commons.

"Sufficient knowledge of the constitution is a degree of knowledge which we all of us have in our several stations—at least every body who has had a liberal education; it is a knowledge we have all of us probably about us—we all know

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that the legislature of this country consists in the King, the Lords, and the Commons—that the executive power rests with the King alone, liable to be superintended and to be corrected too by the two Houses of Parliament—not to be corrected in the King's person, because that by the constitution is inviolable, 'the King can do no wrong'—but to be corrected in those ministers through whose agency active government is carried on."

He thus concluded, making a new noun-substantive :

"The *quo-animo* which the prosecution imputes to the Defendant is this, that he by this publication intended to raise and excite jealousies and divisions among the liege subjects of our Lord the King, and to alienate their affections from the government by King, Lords, and Commons, now duly and happily established by law in this country, and to destroy and subvert the true principles and the free constitution of the government of the realm. The Attorney General says, the pamphlet intended to impress upon the public that the regal power and government of this realm might, consistently with the freedom of this realm as by law declared and established, be carried on in all its functions by the King of this realm, although the two Houses of Parliament should be suppressed and abolished. This is the *quo-animo* which is imputed to this person ; and you are to find whether your consciences are satisfied that these were the motives which influenced him in the publication."

In substance this was a very sound direction ; and, notwithstanding his recent construction of the late act of parliament in the case of *Rex v. Perry*, he abstained from telling the jury whether in his opinion the pamphlet was a libel or not. The jury said, "We are of opinion that the pamphlet is a very improper publication, but that the defendant's motives were not such as are laid in the information, and therefore we find him NOT GUILTY."¹

Lord Kenyon's extreme moderation in this case some accounted for from the circumstance, that the

1. 26 St. Tr. 529-596.

sentiments contained in the supposed libel agreed very much with his own. When writers who had taken the other side of the question were prosecuted, he was more and more furious against them.

The very learned, though wrong-headed Gilbert Wakefield,¹ a clergyman of the Church of England, who said he was a Reformer, like his divine Master, being prosecuted by the Attorney General as author of a pamphlet supposed to have a democratical tendency; and being gallantly defended by Erskine, who urged that a little indulgence might be shown to the eccentricities of one of the finest scholars of whom England could boast, Lord Kenyon thus summed up to the jury :

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Trial of
Gilbert
Wakefield.

"The Defendant has stated that his conduct is founded upon the doctrines promulgated by the Saviour; but surely he has this day shown himself to be very little influenced by them. Such are not the feelings and the conduct to which the Christian religion gives birth. *Ingenuas didicisse fideliter artes emollit mores*² is an expression which has often been used, but the experience of this case shows that it is not always correct."

1. Gilbert Wakefield, an English scholar and theologian, born at Nottingham in 1756. He studied at Jesus College, Cambridge, and took the degree of B.A. in 1776. He became master of the Dissenting Academy at Warrington in 1779, and published soon after "A Plain and Short Account of the Nature of Baptism" and a "New Translation of the Gospel of Saint Matthew" (1782). These works were followed by "Remarks on the Internal Evidence of the Christian Religion" (1789) and "Philological Commentary on the Sacred and Profane Authors" ("Silva Critica, sive in Auctores sacros profanosque Commentarius Philologus") a fifth part of which appeared in 1795. He published in 1791 his "Translation of the New Testament, with Notes," and "An Inquiry into the Expediency and Propriety of Public or Social Worship." The latter caused considerable sensation and elicited several replies. His "Reply to Some Parts of the Bishop of Llandaff's Address" caused him to be imprisoned two years, during which time he wrote his critical essays entitled "Noctes Carcerariæ" ("Prison Nights"). He died in 1801, leaving among his numerous works an edition of Lucretius, which is still esteemed.—*Thomas's Biog. Dict.*

2. "To have learned faithfully the liberal arts refines the manners."

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The Defendant, speaking in mitigation of punishment, said—

“Carmina tantum
Nostra valent, Lycida ! tela inter Martia quantum
Chaonias dicunt, aquila veniente, columbas.¹

Accordingly he was sentenced to two years' imprisonment in Dorchester jail, and to find sureties for his good behavior for five years longer.²

Still more censurable was the conviction of Mr. Cuthill, a most respectable classical bookseller. Although he had published Gilbert Wakefield's other works, he had declined to publish this pamphlet because it was not in his line ; but when it had been published by another bookseller, a few copies of it were sold in the defendant's shop by his servant without his authority or knowledge :

Lord Kenyon : “Before I enter upon the cause itself, I beg leave to say, that I see no good in what has lately taken place in the affairs of another country ; I see no good in the murder of an innocent monarch ; I see no good in the massacre of tens of thousands of the subjects of that innocent monarch ; I see no good in the abolition of Christianity ; I see no good in the depredations made upon commercial property ; I see no good in the overthrow and utter ruin of whole kingdoms, states, and countries ; I see no good in the destruction of the Swiss, a brave and virtuous people. In all these things I confess that I see no good.”

He then spoke very disparagingly of the late Libel Bill, saying that he had strenuously opposed it as it passed through parliament, adding :

“It was a race of popularity between two seemingly contending parties ;³ but in this measure both parties chose to run amicably together.”

1. “Our songs, O Lycidas, prevail as much amid martial weapons as they say Chaonian doves do, the eagle approaching.”

2. 27 St. Tr. 679-760.

3. Meaning *Foxites* and *Pittites*.

Having stated that the evidence was abundantly sufficient to fix the Defendant, he thus concluded :

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"If you think it is possible to keep government together with such publications passing through the hands of the people, you will say so by your verdict, and pronounce that this is not a libel ; but in my opinion that would be the way to shake all law, all morality, all order, and all religion in society. The point is most momentous in this country, and you are now to determine upon it, and to say whether the law is to be preserved, or whether everything should be thrown into confusion."

The Defendant was immediately found guilty ; but the usage he had experienced on his trial caused such scandal that he was afterwards let off on paying a nominal fine.¹

The proprietor of the *Courier* newspaper did not escape so easily, although his offence was equally venial. He had copied into his journal a paragraph stating the undoubted truth, that Paul I.,² Emperor of

March 4,
1799.
Trial of the
proprietor
of the
Courier for
a libel on
the Emper-
or Paul.

1. In his violent address to the jury in this case Lord Kenyon alludes to the state of affairs then subsisting in Europe, which, although it cannot justify his conduct in the trial of prosecutions for sedition, ought very much to mitigate the censure with which it is to be visited. Nothing could be more unfair than to judge him by the standard of propriety established in the quiet times in which we live. With shades of difference among politicians as to the extension of the franchise, vote by ballot, and the duration of parliaments, all the Queen's subjects are attached to the constitution, and disposed to obey the law. Then there was a small but formidable party, composed of some who sincerely believed that for the public good all existing institutions should be abolished, and of others recklessly desirous to bring about bloodshed and confusion, in the hope of grasping at wealth and power for themselves. The great body of the loyal and well intentioned were then in a panic, and thought that the best course for safety was to enact new penal laws, and visit with remorseless severity all those persons from whom their fears had arisen. Lord Kenyon, I am convinced, on every occasion was persuaded that he acted lawfully as well as conscientiously, and he was regarded by many as the savior of his country.

2. Paul I., Petrovitch, Emperor of Russia, born October 12, 1754; assassinated March 23, 1801. He was the son of Peter III. and Catharine II., and when, after the assassination of Peter, Catharine assumed the reins of government (1762), she furnished Paul with

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Russia, had made himself odious and ridiculous to his own subjects by forbidding the exportation of timber and other Russian produce from his dominions to Great Britain. Erskine, for the Defendant, contended that the supposed libel was a fair comment upon a tyrannical and foolish act, and was meant to vindicate the rights of Englishmen, not to insult foreigners.

Lord Kenyon : "What could have induced the Princes of Europe to the conduct some of them have pursued, I will not venture to investigate ; but, sitting in a court of law, I am bound to say that it does not absolve states from enforcing a decent respect to the magistracies of each other, and to the persons of sovereigns executing the law. All governments rest mainly on public opinion, and to that of his own subjects every wise sovereign will look. Between the sovereign and the people of every country there is an express or implied compact for a government of justice. Yet the Emperor of Russia is here

good instructors, but kept him in ignorance of public affairs. As he grew up, her personal dislike of him became so great that she compelled him to live at a distance from the capital, surrounded him with spies, and would have disinherited him if she could. Such treatment made him morose, revengeful, craven toward his mother, yet wilful and tyrannical toward inferiors. At the age of 19 he was married by order of his mother to a princess of Hesse-Darmstadt, and after her death in 1776 to a princess of Würtemberg. Catharine died November 17, 1796, and Paul ascended the throne. To undo whatever Catharine had done seemed to be his guiding principle. He disbanded her armies, declared peace with Persia, disapproved of her policy toward Poland, liberated Kosciuszko and the other Polish prisoners, decreed that the female line should henceforth be excluded from succession, and invited his eldest son to assist in the administration. But his defective education, egotism, and nervous and fitful temper made him an execrable tyrant. At last his capriciousness and despotism seemed to border on insanity. A conspiracy was formed by a number of noblemen. To his son Alexander they represented that they had no other object than to compel the Emperor, on the ground of mental incapacity, to abdicate the throne. They forced their way into Paul's chamber late at night, and presented for his signature a letter of abdication. He refused to sign, whereupon one of the conspirators knocked him down and knelt upon him, and, the others assisting, the Emperor was murdered within hearing of his eldest son and successor. All classes in St. Petersburg received the news of his death with great rejoicing.—*Appleton's Encyc.*, vol. xiii. p. 172.

said to be a transgressor of all law. In private life a similar charge would be the foundation of an action for damages ; and why is a great sovereign to be deprived of all remedy ? It is for you, gentlemen of the jury, who come out of that rank which enables you to judge of the interests of the commercial world, to pronounce whether this is or is not a dangerous publication ? I am bound by my oath to declare my own opinion, and I should forget my duty if I were not to say to you THAT IT IS A GROSS LIBEL."

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The Defendant was found Guilty, and reckoned himself lucky to get off with six months' imprisonment, and a fine of 100*l*.¹

On the trial of Williams for publishing "Paine's Age of Reason," Lord Kenyon, in summing up, tried to rival Erskine's famous address in defence of revealed religion :

Trial of
Williams
for pub-
lishing
Paine's Age
of Reason.

"Christianity," said he, "from its earliest institution met with its opposers. Its professors were very soon called upon to publish their 'Apologies' for the doctrines they had embraced. In what manner they did that, and whether they had the advantage of their adversaries, or sunk under the superiority of their arguments, mankind for near two thousand years have had an opportunity of judging. They have seen what Julian,²

A.D. 1797.
Lord
Kenyon's
display of
his know-
ledge of ec-
clesiastical
history.

1. 27 St. Tr. 627-642.

2. Sic. Julian, or, more fully, Julianus Flavius Claudius, surnamed the Apostate, a Roman emperor, was born in Constantinople in 331 A.D. He was the son of Julius Constantius, and a nephew of Constantine the Great. On the death of the latter, the soldiers, in order to secure the succession of his sons, massacred all the other members of the Flavian family except Julian and his elder brother Gallus. The jealousy of the Emperor Constantius afterwards banished the brothers to Cappadocia, where they were educated in the principles of the Christian religion and officiated as lecturers in the church of Nicomedia. In 351 Gallus was created Cæsar by the emperor, and Julian was permitted to return to his native city, but in a short time was again exiled to Nicomedia. He subsequently embraced the philosophy of the Platonists, and, having obtained permission to visit Athens, he pursued his studies in that city and was privately initiated in the mysteries of the religion of Greece. After the execution of his brother, in 355, he was recalled to Constantinople through the influence of the Empress Eusebia. Constantius created him Cæsar, and gave him command of the armies in Gaul. Julian also received in marriage Helena, sister of the emperor. He

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Justin Martyr,¹ and other apologists have written, and have been of opinion that the argument was in favor of those pub-

made four successful campaigns against the Germans, who had overrun Gaul, expelled them from that country, took captive Chnodomarius, their most powerful king, invaded Germany, and gained a high distinction for military skill and personal bravery. Constantius, envious of the fame of Julian, and wishing to destroy his power, commanded him to send his best troops to the East, in order that they might assist in the Persian war. The soldiers, who had become greatly attached to Julian, refused to obey, and, notwithstanding his remonstrances, proclaimed him Augustus. It is even stated that they threatened him with death if he refused the purple. He then sent an embassy to Constantius, requesting that he might be recognized as Augustus in Gaul. This not having been granted, he marched towards Constantinople; but the sudden death of the Emperor, in 361, enabled Julian to ascend the imperial throne unopposed. Immediately after his accession he threw off the hypocrisy which had shielded him for so long a time, and, renouncing Christianity, in which probably he was never a true believer, declared his faith in the divinities of Greece and Rome. He proclaimed liberty of conscience to all, commanded the pagan temples to be reopened, and even attempted to restore Judaism by rebuilding the temple at Jerusalem. He was prevented from completing this project by remarkable eruptions of fire, which rendered it impossible for the workmen to continue their labors. In the spring of 363 he set out from Antioch, at the head of 65,000 well-disciplined troops, on his contemplated invasion of Persia. He crossed the Euphrates and Tigris, and gained several important victories over the Persians; but the oppressive heat and the scarcity of provisions compelled him to retreat, and in June of the same year, as he was bravely repelling an attack of the enemy, a javelin wounded him fatally in the side. He died the following evening, while he was calmly conversing with his friends on philosophy. Julian was the author of an account of his Gallic and German wars, which has been lost, "The Cæsars," "Misopogon," a satire against the citizens of Antioch, whom he had offended by his philosophical austerity and his slovenly habits, and of about eighty letters upon various subjects.—*Thomas' Biog. Dict.*

1. Justinus, commonly called Justin Martyr, a Christian philosopher and martyr in the second century. His parents were heathens, and himself a zealous adherent to the Platonic philosophy; but, disputing with a Christian in 132 he was converted to that faith, though he still continued to wear the pallium or cloak of the Grecian philosophers. He was an equal honor to Christianity by his knowledge, his firmness, and the purity of his life. A persecution breaking out against the Christians under Antoninus, Justinus presented to that emperor an admirable apology in their behalf, which had the desired effect. He afterwards addressed another apology to Marcus Aurelius, in which he defended his co-religionists against the calum-

lications. We have heard to-day that the light of nature and the contemplation of the works of creation are sufficient, without any other revelation of the Divine will. Socrates, Plato,¹

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nies of Crescentius, a Cynic philosopher. This last is said to have gained him the crown of martyrdom, about 165. Besides these apologies, his dialogue with Trypho, a learned Jew, and some other pieces in the Greek language, are extant. The best edition of his works is that of Jena, 1844.—*Beeton's Biog. Dict.*

1. Plato, the most illustrious philosopher of antiquity, was born in the island of Ægina B.C. 429. In his youth he applied himself to poetry and painting, both which pursuits he relinquished to become a disciple of Socrates. During the imprisonment of his master Plato attended him, and committed to writing his last discourses upon the Immortality of the Soul. He then retired to Megara, after which he extended his travels to Magna Græcia and Egypt. On his return to Athens he formed his school in a grove called the Academy, over the door of which seminary was this inscription: "Let no one ignorant of geometry enter here." He was soon attended by a number hearers from various countries, who spread his fame abroad in such a manner that several princes invited him to their courts. Among those who sought his acquaintance was Dionysius of Syracuse, whom Plato visited three times. When he first went to Sicily he undertook the instruction of Dion, the brother-in-law of the king; but the doctrines which the philosopher taught were so disagreeable to the tyrant that he not only banished him from the island, but prevailed upon the inhabitants of Ægina to sell him for a slave. From this state, however, he was redeemed by Aniceris, of the Cyrenaic sect, who sent him to Athens. Dionysius now desired Plato to return, which request he answered by saying that philosophy would not allow him to think of such a man. A regard for Dion, however, overcame his resentment; and a wish to be serviceable to the younger Dionysius induced him to visit Syracuse, where he was received by the tyrant with extraordinary honors. The king even went so far as to introduce a reform in his court, which, while it gave satisfaction to the virtuous, produced jealousies and cabals against the philosopher among men of corrupt principles, at the head of whom was Philistus, whose evil counsels prevailed, and Dion was banished. Plato then returned to Athens, where he had not been long before the tyrant courted him back once more, with which request he complied at the entreaty of Archytas of Tarentum, and other philosophers. On his arrival he met with a gracious reception, and was presented with eighty talents of gold; but as he could not procure the recall of Dion, he returned to Greece, where he devoted the rest of his days to the improvement of science and the education of youth. Plato died B.C. 347. The best edition of Plato's works, in Greek and Latin, is that of Immanuel Bekker, 10 vols., 1816-18. A portion of his works (fifty Dialogues and twelve Epistles) has been translated into English by Sydenham and Taylor, London, 5 vols., 1804.—*Cooper's Biog. Dict.*

CHAP. Xenophon,¹ Tully²—each of them in their turns professed they
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1. Xenophon, a celebrated Athenian historian and general, was a son of Gryllus, and a native of the demus Ercheia. He is supposed to have been born about 445 B.C. According to Diogenes Laertius, from whose writings we derive nearly all that is known of his life, Xenophon fell from his horse at the battle of Delium, in 424 B.C., and would probably have been killed if he had not been rescued by Socrates. He became a pupil of Socrates at an early age, and, according to Photius, was also a pupil of Isocrates. Little is known of the events of his life which occurred between the battle of Delium and the year 401 B.C. Diogenes Laertius states that "Xenophon edited or made known the History of Thucydides, although it was in his power to pass it off as his own work"; but the truth of this statement is doubted by some critics. In 401 B.C. he went to Sardis, and entered the service of the Persian prince Cyrus the Younger, whom he accompanied in an expedition against Artaxerxes Mnemon, King of Persia. Xenophon and the other Greeks who engaged in this expedition were deceived as to its real object. Cyrus was defeated and killed at Cunaxa, near Babylon, and the Greek general Clearchus was treacherously slain. Xenophon was one of the generals who conducted the Greek army of 10,000 in its memorable retreat from the Tigris to the Black Sea. He displayed great firmness, courage, and military skill in this operation. This expedition and retreat form the subject of his most celebrated work, the "Anabasis, or History of the Expedition of Cyrus the Younger," which is a very interesting narrative and is written in a natural, agreeable style.

According to some authorities, he was banished from Athens about 399 B.C., perhaps because he was a friend of Socrates. Diogenes Laertius says he was banished for Laconism. He took part in an expedition which the Spartan king Agesilaus conducted against the Persians in 396, and he fought in the Spartan army against the Athenians at the battle of Coroneia (394 B.C.). Soon after this date he settled, with his wife Philesia and his children, at Scillus, near Olympia, where he resided many years and employed his time in hunting and writing. During his residence at Scillus he wrote a "Treatise on Hunting," his "Anabasis," and perhaps other works. The decree by which he was banished from Athens was repealed a few years before his death, which occurred about 355 B.C. He had two sons, named Gryllus and Diodorus. It is supposed that all of his writings have come down to us. Under the title of "Hellenica," he wrote a history of Greece from 411 to 362 B.C. His "Cyropædia" (*Κυροπαιδεία*) is commonly regarded as a political romance founded on the exploits of Cyrus the Great, and has no authority as a history. Among his other works are a "Life of Agesilaus," "The Symposium, or Banquet," in which he explains the ideas of Socrates in relation to love and friendship, and delineates the character of Socrates, a Dialogue between Socrates and Critobu-

2. See note 1, p. 497.

wanted other lights, and knowing and confessing that God was

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lus, entitled *Οἰκονομικός*, which treats of domestic and moral economy, and is highly esteemed, and a philosophic work called "The Memorabilia of Socrates" (*Ἀπομνημονεύματα Σωκράτους*), which purports to be an exposition of the doctrines and character of his illustrious master. It is highly prized as a memorial of the practical part of the Socratic philosophy. "Xenophon," says Macaulay, "is commonly placed, but, we think, without much reason, in the same rank with Herodotus and Thucydides. He resembles them, indeed, in the purity and sweetness of his style; but in spirit he rather resembles that later school of historians, whose works seem to be fables composed for a moral, and who in their eagerness to give us warning and example forgot to give us men and women." (Essay on "History," 1828.) Xenophon's "Memorabilia" has been translated into English by Sarah Fielding, his "Symposium" by J. Wellwood, his "Cyropædia" by M. A. Cowper, and his "Œconomicus" by Robert Bradley.—*Thomas' Biog. Dict.*

1. Marcus Tullius Cicero was born at Arpinum, an ancient city of Latium, in B.C. 106; the same year which gave birth to Pompey. The great aptitude for learning which he displayed in boyhood induced his father to remove to Rome, where the future orator and statesman was educated under the best masters of the time. In B.C. 89 he served his first and only campaign under Pompeius Strabo, the father of Pompey, who was then engaged in the Social war. Having thus complied with the custom of his age, Cicero devoted the next six years to the studies which were necessary to raise him to distinction as a lawyer and an orator; practising declamation in Latin and Greek, and storing his mind with those precepts of philosophy, which, throughout his eventful life, cheered him amidst professional toils, and consoled him under disappointment and persecution. At the age of twenty-five he came forward as a pleader, and, even at the risk of incurring the displeasure of Sulla, defended clients who were obnoxious to the dictator. But his health, which was naturally feeble, gave way under incessant application to study; and, for the purpose of invigorating his constitution, as well as correcting certain defects in his style of oratory, he visited Athens (B.C. 79), made a tour of Asia Minor, and for some time resumed his studies at Rhodes, under Molo, from whom he had received instructions at Rome. After an absence of two years, he returned to Rome with renewed health and enlarged knowledge, and speedily placed himself at the head of the Roman bar. Being qualified by law at the age of thirty to become candidate for the lowest of the great offices of state, he was elected quæstor in B.C. 76, and obtained each of the higher offices as soon as he was permitted by law to hold it, reaching the consulship in B.C. 63. During his consulship he was called upon to grapple with the famous Catilinarian conspiracy; and the courage, prudence, and decision which he manifested in directing the difficult and complicated investigations that led to the detection and punishment of the conspirators called forth the encomiums of all classes of

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good, they took it for granted the time would come when he the citizens. The public enthusiasm heaped upon him unwonted honors; in the senate and in the forum he was saluted as *parens patriæ* (the father of his country); thanksgivings in his name were voted to the gods; and all Italy united in testifying their admiration and gratitude. But his unexampled good fortune had excited the jealousy of many of the leading nobility, and his irrepressible vanity exposed him to the ridicule and assaults of his enemies. He was accordingly destined soon to experience a reverse of fortune as remarkable, and more sudden than his rise. It had been judged necessary to put to death five of the ringleaders in the conspiracy; and though this was done in virtue of the dictatorial authority with which the consuls were invested by the senate, and with the consent and approval of that body, Cicero was indicted for having put a Roman citizen to death untried, and forced to go into banishment in April, B.C. 58. But private malice soon expended itself, and public feeling, reverting to his signal services in rescuing his country from impending ruin, recalled him after an interval of seventeen months. His reception at Rome cheered his dejected spirits; but the circumstances which led to his banishment prevented him from ever after recovering his former position. In B.C. 53 he was admitted a member of the college of Augurs, and towards the end of B.C. 52 he was appointed proconsul of Cilicia. He administered the affairs of his province with the strictest impartiality, corrected the abuses which had been introduced or sanctioned by his predecessors, and realized in practice the precepts which in his writings he had inculcated. He returned to Italy in B.C. 49, at the commencement of the civil war between Cæsar and Pompey, and finally resolving to espouse the cause of the latter, followed him to Greece. After the battle of Pharsalia, B.C. 48, at which he was not present, he again returned to Italy, and was received into favor by Cæsar. Separating himself now entirely from all parties in the state, he arranged and published during the next three years nearly all his most important works on rhetoric and philosophy. But the tumults excited by Antony after the murder of Cæsar, B.C. 44, again drew him from his seclusion; and Augustus, knowing the value of such an ally, and carefully concealing from him his real intentions, gladly availed himself of his services as leader of the senate. Cicero's zeal, which was not always tempered with discretion, now exhibited itself in the famous philippics against Antony, which again made him the idol of the Roman people. But the formation of the second triumvirate sealed the fate of the great Roman orator. His name appeared in the list of the proscribed, having been placed there by Antony as one of the conditions of the league; and after an unsuccessful attempt to escape, he stretched forward his head to the executioners, and called upon them to strike (B.C. 43). His head and hands were conveyed to Rome, and, by the orders of Antony, nailed to the Rostra. We have not space to delineate the character of Cicero, or to enumerate his works. These have been repeatedly published, both in mass and in detached portions.—*Cycl. Univ. Biog.*

would impart another revelation of his will to mankind. Though they walked as it were through a cloud, darkly, they hoped their posterity would almost see God face to face."

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The *talesmen* did not know which to admire most, the piety, the learning, or the eloquence of the judge. The defendant was very properly found *guilty*, and sentenced to a year's imprisonment with hard labor.¹

I now come to a trial at which I was myself actually present—the prosecution of Hadfield for shooting at George III.

June 26,
1800.
Trial of
Hadfield,
when the
biographer
first saw
Lord
Kenyon.

On the 28th of June, 1800, being yet a boy, for the first time in my life I entered the Court of King's Bench, and with these eyes I beheld Lord Kenyon. The scene was by no means so august as I had imagined to myself. I expected to see the Judges sitting in the great hall, which, though very differently constructed for magnificence, might be compared to the Roman Forum. The place where the trial was going on was a small room enclosed from the open space at the south-east angle, and here were crowded together the Judges, the jury, the counsel, the attorneys, and the reporters, with little accommodation for bystanders. My great curiosity was to see Erskine, and I was amazingly struck by his noble features and animated aspect. Mitford, the Attorney General, seemed dull and heavy; but Grant, the Solicitor General, immediately inspired the notion of extraordinary sagacity. Law looked logical and sarcastic. Garrow² verified his designation

1. 26 St. Tr. 653-720.

2. William Garrow, the subject of this sketch, was one of the most successful advocates of his day; owing the ascendancy he attained to his natural talent and sagacity more than to any deep knowledge of law; to which indeed he made no pretensions, but modestly acknowledged and freely relied on the superiority of his colleagues. William Garrow was born on April 13, 1760 at Monken-Hadley in Middlesex, where his father, the Rev. David Garrow, kept a school, in which his son received the whole of his education. At the usual age of fifteen he was articled to Mr. Southouse, a respectable attorney residing in

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of "the tame tiger." There were five or six rows of counsel, robed and wigged, sitting without the bar—but I had never heard the name of any of them mentioned before. I was surprised to find the four Judges all dressed exactly alike. This not being a Saint's day, the Chief Justice did not wear his collar of SS to distinguish him from his brethren.¹ There was an air of

Milk Street, Cheapside. In that gentleman's office he acquired a practical knowledge of the profession and showed so much ability and quickness that he was strongly recommended by his master to aim at the higher branch of the law. His friends consenting, he placed himself at the termination of his articles under Mr. Crompton, then an eminent special pleader, whose book of practice was for a long series of years the popular guide to the study. Having been admitted as a student at Lincoln's Inn on November 27, 1778, he was called to the bar by that society on November 26, 1783. . . .

Immediately taking a foremost rank among the barristers of the day, his services were perpetually engaged in honorable contest with the phalanx of eminent men who, during the twenty-seven years that he remained at the bar with a silk gown, graced the courts in London and the country, the principal of whom were Erskine, Gibbs, and Best. He was employed by the government in most of the state trials occurring during that period; and in many of them the sole management was entrusted to him. (State Trials, xxii-xxxi). At last the time came when the ministry could show their appreciation of his industry, ability, and eloquence. In June, 1812, he was appointed solicitor general, and knighted, having six years previously held the office of attorney general to the Prince of Wales before he was regent. In the next year he was raised to the same office as the king's attorney, in succession to Sir Thomas Plumer, and further promoted to the chief justiceship of Chester in March, 1814.

He entered parliament in 1805, and represented successively Gatton, Collington, and Eye; but his senatorial harangues were not distinguished with more success than is usually attributed to members of the legal profession.

After performing the duties of attorney general for four years with exemplary forbearance and general commendation, he relieved himself from its responsibility by accepting on May 6, 1817, a seat on the bench of the Exchequer, made vacant by the promotion of Sir Richard Richards to the post of chief baron. For nearly fifteen years he exercised the functions of a judge, when, prompted by the advance of age and infirmity, he retired in February, 1832, receiving an honorable reward for his services by being made a privy counsellor. He lived nearly eight years afterwards, and died on September 24, 1840, at his house at Pegwell Bay, near Ramsgate, at the age of eighty.—*Foss's Judges of England*.

1. This was written before I had taken my seat as Chief Justice ;

superiority about him, as if accustomed to give rule, but his physiognomy was coarse and contracted. Mr Justice Grose's aspect was very foolish, but he was not by any means a fool, as he showed by being in the right when he differed from the rest.¹ Mr. Justice Lawrence's² smile denoted great acuteness and dis-

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and I had erroneously supposed that the collar of SS is worn on saints' days, along with the scarlet and ermine.

1. "GROSE *Justice*, with his *lantern jaws*,
: Throws *light* upon the English laws."

Complimentary Epigram by Erskine.

2. Sir Soulden Lawrence, (1751-1814), judge; son of Thomas Lawrence, M. D., President of the College of Physicians, by Frances, daughter of Charles Chauncey, M. D., of Derby, was born in 1751, and educated at St. Paul's School and St. John's College, Cambridge, where he graduated B.A. in 1771 as seventh wrangler and proceeded M.A. and was elected fellow in 1774. At college he was a contemporary of Edward Law, afterwards Lord Ellenborough. He was called to the bar at the Inner Temple in June 1784, and to the degree of serjeant-at-law on Feb. 9, 1787, and in March, 1794, succeeded Sir Henry Gould the younger as justice of the common pleas, being at the same time knighted. In the following June he was transferred to the court of king's bench on the resignation of Sir Francis Buller. He was a member of the special commission that tried Thomas Hardy, Horne Tooke, and other partisans of the French republic for high treason in 1794-6, and concurred with Lord Kenyon ere dismissing the prosecution for libel brought by Tooke after his acquittal, against the printer and publisher of a report of the House of Commons, which reflected on him and his colleagues as disaffected to the government. Lawrence was a judge of great ability and independence of mind, and sometimes differed from Lord Kenyon, notably in the case of *Huycraft v. Creasy* in 1801, an action for damages for false representation made in good faith, where Kenyon gave judgment for the plaintiff. Kenyon's vexation at being overruled—for the other members of the court agreed with Lawrence—is supposed to have hastened his death. Lawrence's extreme scrupulousness is evinced by the fact that his will contained a direction for the indemnification out of his estate of the losing party in a suit in which he considered that he had misdirected the jury. In consequence of a difference with Lord Ellenborough he resigned his seat on the king's bench in March, 1803, and returned to the common pleas, succeeding to the place vacant by the death of Sir Giles Rooke. His health failing, he retired in Easter term 1812, and was succeeded by Sir Vicary Gibbs. He died unmarried on July 8, 1814, and was buried in the church of St. Giles-in-the-Fields, where there is a monument to him. He was something of a connoisseur in art, and had a small collection of pictures, including works by

CHAP. XLIV. crimination. Mr. Justice Le Blanc¹ looked prim and precise.

From the opening of the case by the Attorney General, I formed a very low estimate of the eloquence of the English bar; but when Erskine began the defence, he threw me into a phrensy of admiration, and indeed I should have been fit for nothing had I been less excited; for this was perhaps his *chef d'œuvre*, and, therefore, the finest speech ever delivered at the English bar.

Proof of
the prison-
er's in-
sanity.

Lord Kenyon did not interpose till several witnesses had distinctly proved the mental hallucination under which the prisoner had labored when he fired at the King. The solemn proceeding was then thus terminated:

Lord
Kenyon
interferes
and puts an
end to the
trial.

Lord Kenyon.—"Mr. Erskine, have you nearly finished your evidence?"

Mr. Erskine.—"No, my Lord, I have twenty more witnesses to examine."

Lord Kenyon.—"Mr. Attorney General, can you call any witnesses to contradict these facts? With regard to the law

Spagnoletto, Franz Hals, Sir Joshua Reynolds, Opie, Morland, and other celebrated artists, which was sold after his death.—*Dict Nat. Biog.*

1. Simon Le Blanc. This amiable judge was the second son of Thomas Le Blanc, of Charterhouse Square, London, Esq., and was born about the year 1743. Admitted a pensioner of Trinity Hall, Cambridge, in January, 1766, he became a scholar in November following, proceeded LL.B. in 1773, and was elected a fellow of his house in January 1779. He studied the law at the Inner Temple, and was called to the bar in February, 1773, joining the Norfolk Circuit. He accepted the degree of the coif in Hilary Term 1787, obtaining in the Common Pleas a considerable lead, and in 1791 he was chosen counsel for his alma mater.

He was promoted on June 6, 1799, to the post of justice of the King's Bench, and knighted. In that court he sat for nearly seventeen years, with the character of an excellent lawyer and a conscientious and impartial judge. The absence of incidents worthy of being related in so long a period—if we may except an atrocious libel on him in a newspaper called "The Independent Whig," in 1808, for which the editor was speedily punished by a long imprisonment (State Trials, xxx, 1131-1132)—is a proof that the whole of it was employed in the regular discharge of duty uninfluenced by political bias or personal prejudice.—*Foss's Lives of the Judges.*

as it has been laid down, there can be no doubt upon earth. To be sure if a man is in a deranged state of mind at the time he commits the act charged as criminal, he is not answerable.

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The material question is *whether at the very time when the act was committed this man's mind was sane?* I confess that the facts proved convince my mind that at the time he committed the supposed offence (and had he then known what he was doing, a most horrid offence it was) he was in a very deranged state. Mr. Attorney General, you have heard the facts given in evidence. To be sure, such a man is a most dangerous member of society, and it is impossible that he can be suffered, supposing his misfortune to be such, to be let loose upon the public. But I throw it out for your consideration, whether in this criminal prosecution it is necessary to proceed farther. If you can show it to be a case by management, to give a false color to the real transaction, then assuredly the defence vanishes.

A.D. 1800.
Sound view
of the ques-
tion how
far mental
disease
exempts
from
criminal
responsi-
bility.

Mr. Attorney General: "I must confess I have no reason to suspect that this is a colored case. On the contrary, I stated that I understood the prisoner had been discharged from the army upon the ground of insanity. But the circumstances which have now appeared were perfectly unknown to me."

Lord Kenyon: "Your conduct, Mr. Attorney General, has been extremely meritorious. In the present posture of the cause, I will put it to you whether you ought to proceed."

Mr. Attorney General: "Your Lordship will feel how much it was necessary for me to wait until I should have some intimation on the subject."

Lord Kenyon: "It was necessary for us all to wait till the cause had reached a point of maturity. The prisoner, for his own sake and for the sake of society at large, must not be discharged. This is a matter which concerns every one of every station, from the King on the throne to the beggar at the gate. Any one might fall a sacrifice to this frantic man. For the sake of the community, he must somehow or other be taken care of, with all the attention and all the relief that can be afforded to him."

Attorney General: "I most perfectly acquiesce in what your Lordship has said."

Lord Kenyon: "Gentlemen of the jury, the Attorney Gen-

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eral's opinion coinciding with mine, I believe it is necessary for me to submit to you whether you will not find that the prisoner at the time he committed the act was not under the guidance of reason ?”

The jury finding accordingly, the prisoner was detained in custody—somewhat irregularly, there being then no law to authorize the detention, but the statutes 46 Geo. III., chapters 93, 94, were passed, legalizing the detention in this and all similar cases.¹

On this occasion Lord Kenyon conducted himself with great propriety, laying down the sound rule which ought to prevail where the defence to a criminal charge is *insanity*, and applying that rule with promptness and precision to the facts which were proved before him.—In the next case which I have to mention he was very unfortunate, and he justly incurred considerable obloquy.

May 2,
1799.
Benjamin
Flower's
case.

Benjamin Flower, having published a paragraph in a Cambridge newspaper of which he was proprietor, reflecting on Dr. Watson,² Bishop of Llandaff, complaint

1. 27 St. Tr. 1281–1356.

2. Richard Watson, a celebrated prelate, born Aug., 1737, at Heversham, Westmoreland, where he was educated under his father, who was master of the grammar-school at that place. In 1754 he became a sizar in Trinity College, Cambridge, of which, in 1760, he was elected fellow. In 1764 he was chosen to the chemical professorship, and in 1771 he succeeded to that of divinity. In 1776 he printed “An Apology for Christianity,” addressed to Gibbon, with whom he held a friendly correspondence. In 1782 he was advanced to the bishopric of Llandaff, with permission to hold the archdeaconry of Ely, his professorship, and other ecclesiastical preferments. On this promotion he published a letter to the archbishop of Canterbury, containing a plan for equalizing church revenues. In 1785 he printed six volumes of “Theological Tracts,” selected from various authors, for the use of students. The year following, Mr. Luther, of Ongar, in Essex, though no way related to the bishop, left him an estate worth 24,000*l.*, which he sold to Lord Egremont. During the king's illness in 1788 Dr. Shipley, of St. Asaph, died, on which Bishop Watson made a speech in the House of Lords, advocating the right of the Prince of Wales to the regency, and it was expected that his lordship's translation to the vacant see would have followed; but the king recovered, and the bishop was disappointed. In 1796

was made of it in the House of Lords as a breach of privilege, and without any summons or hearing of the party accused, it was voted a libel, and he was ordered to be taken into custody by the Serjeant-at-Arms. Accordingly he was arrested at Cambridge, brought a prisoner to London, and produced at the bar. A motion was then made that for this supposed offence he should be fined 100*l.* and confined six months in Newgate.

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Lord Kenyon supported the motion, and said there was no ground for complaint on the score of severity, for if the libel had been prosecuted in the King's Bench, the defendant would not have got off with so slight a punishment.

After the defendant had lain some weeks in Newgate, he applied for his liberation to the Court of King's Bench, by Mr. Clifford, a descendant of the Cliffords Earls of Cumberland,—when the following dialogue took place between the counsel and the Chief Justice:

Dialogue
between
Mr. Clifford
and Lord
Kenyon on
moving for
a writ of
Habeas
Corpus.

Mr. C. "I humbly move your Lordship for a writ of *habeas corpus*, to be directed to the keeper of Newgate, commanding him to bring into court the body of Benjamin Flower." *C. J.* "Is not Mr. Flower committed by the House of Lords for a breach of privilege?"—*Mr. C.* "Yes, for a libel and breach of privilege." *C. J.* "Then you know very well, Mr. Clifford, you cannot succeed. This is an attempt which has been made every seven or eight years for the last half century; it regularly comes in rotation; but the attempt has always failed. You do not expect to succeed?"—*Mr. C.* "I do expect to succeed. I should not make this application un-

he published an answer to Paine's "Age of Reason," in a volume called "An Apology for the Bible," which passed through many editions. In 1798 he printed "An Address to the People of Great Britain," recommending large sacrifices to repel the French, for which he was attacked by Gilbert Wakefield. The bishop died at Calgarth Park, Westmoreland, July 4, 1816. Besides the works already mentioned he published five volumes of "Chemical Essays," several sermons, charges, and tracts. After his death appeared the "Memoirs of his Life," written by himself.—*Cooper's Biog. Dict.*

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less I knew I could support it. My affidavit states, that Mr. Flower is imprisoned in Newgate for a supposed libel on the Bishop of Llandaff, that he is not conscious of having libelled the Bishop of Llandaff or any one else, and that he has never been put upon his defence." *C. J.* "Does he swear that it is not a libel on the Bishop of Llandaff?" *Mr. C.* He swears that he is not conscious that it is a libel."—*C. J.* "Another part of his affidavit is also false, that he was not put upon his defence. I happened to be one of his judges—I was in the House of Lords at the time. File your affidavit, Sir, that your client may be prosecuted. You shall take nothing by your motion."

The counsel, however, insisted on being heard, to argue the question that the commitment was illegal, and at last Lord Kenyon said :

"If you will have it, take your writ. It will be of no use to you. Your move is merely by way of experiment, and without any view to benefit your client ; I am very sure of that."

June 10,
1799.

The defendant being brought up in custody of the keeper of Newgate, Mr. Clifford complained bitterly of the language of the Chief Justice when the rule was granted, and delivered a very long address upon the illegality of the commitment, interspersed with many sarcastic remarks on the House of Lords and the modern nobility by whom it is filled.

Lord
Kenyon's
attack on
Lord-
Treasurer
Clifford
and the
ancient
nobility.

Lord Kenyon : "The learned counsel has drawn a picture of a monster established in power by the voice of the people, and then doing a great many horrid things—among others filling the House of Lords with a banditti. The learned counsel, it is true, did not use that word—but 'persons who supersede the ancient nobility of the country.' I happen to be one of that number : of myself I will say nothing. But if we look back to the history of the country, and consider who were made peers in former times, and what they were whose descendants are now called 'the hereditary nobility of the country;' if we look back to the reign of Charles II., in the letters which form the word CABAL, will the memory of the learned counsel, who seems to think virtues and vices hereditary, furnish

him with the names of no persons who were then made peers, although they were not very likely to devolve virtues on the succeeding ages? From what has passed, I am called upon to vindicate the House of Lords. Their honor stands on so stable a ground, that no flirting of any individual can hurt them. The public feels that its liberties are protected by the two Houses of Parliament. If ever the time shall come that any malignant, factious, bad man shall wish to overturn the constitution of the country, the first step he will take, I dare say, will be to begin by attacking in this Court one or both of the Houses of Parliament. But all such petty attempts will have no effect upon the public mind; they will only recoil upon those who make them."

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He then proceeded to lay down the sound rule that commitments for contempt by either House of Parliament could not be examined into by a Court of law, and the prisoner was remanded to Newgate.¹ Mr. Clifford published a report of the case with a post-script, in which he said:

Mr. Clifford's
retaliation.

"The hereditary boasts one advantage over new nobility; from the very cradle its children are formed to the stations which they are destined afterwards to fill. Accordingly we seldom observe in our hereditary peers those pedantic notions of impracticable morality, or that boisterous impetuosity of manners, which sometimes accompany and disgrace even in the highest situations those who have been raised to them from the desk, merely on account of their industry and professional success."²

Lord
Kenyon
laid down
the true
constitu-
tional doc-
trine since
affirmed
by Act of
Parliament
respecting
the power
of the two
Houses to
print and
publish.

Lord Kenyon was much more fortunate in supporting the inquisitorial power of the two Houses of Parliament, and their right to order the publication of whatever they think necessary for the public service, although it may reflect upon individuals. After Hardy, Horne Tooke, and Thelwall³ had been tried for high

1. 27 St. Tr. 985-1078.

2. This cousin of Lord Treasurer Clifford was an admirable speaker, and might have risen to the highest honors, but he died young from intemperance.

3. John Thelwall was born in London, July 27, 1764, and after

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treason and acquitted, a committee of the House of Commons was appointed to inquire into the condition of the country, and made a Report to the House, stating that evidence was adduced against them, showing "that they and their confederates were decidedly hostile to the existing government and constitution of this kingdom, and wished for the subversion of every established and legitimate authority." This Report was ordered by the House to be printed, and was reprinted and published by a bookseller. Against him an application was made, on behalf of Horne Tooke, to the Court of King's Bench, for a criminal information. The defendant made an affidavit of the facts, and de-

studying law in an attorney's office, embraced literature as a profession, attracting some notice in 1787 by the publication of two volumes of "Poems." He then took a house near the Borough hospitals, and studied anatomy, physiology, and chemistry. Mr. Thelwall began his career as an orator before he was out of his teens, at the Society of Free Debate, held at Coachmakers' Hall; and he joined in the political struggles of the period by becoming a member of the Corresponding Society, where his boldness and fluency of speech attracted the notice of the leading men of the day. With Thomas Hardy and John Horne Tooke he was tried for high treason, and acquitted (1794). He next lectured on politics and political history; and after an itinerant course of several years he settled in London as a lecturer and tutor in elocution, taking pupils afflicted with impediments of speech, in the cure of which he was eminently successful. He was making a lecturing tour in the West of England, when he was attacked with some affection of the heart, which terminated his existence Feb. 17, 1834. Besides the "Poems" already referred to, Mr. Thelwall wrote "The Peripatetic, a Series of Politico-Sentimental Journals, in verse and prose," 3 vols. 1793; "The Tribune," 3 vols., 1796, containing his political lectures; "Letter to Clive on Imperfect Developments, and Treatment of Impediments of Speech," 1810; "Vestibule of Eloquence," 1810; "Essay on Rhythmus, and the Utterance of the English Language," 1812; "Results of Experience in the Treatment of Deficiency in the Roof of the Mouth and other Malconformations," 1814; and articles in the "Medical and Physical Journal," on defective and difficult utterance. His son, the Rev. Algernon Sydney Thelwall, M.A., born 1796, studied at Trinity College, Cambridge; became lecturer on public reading at King's College, London; and died Nov. 30, 1863, leaving numerous works, chiefly polemical, and "Lectures and Exercises in Elocution," 1850.—*Cooper's Biog. Dict.*

nied all malicious intention whatsoever. Erskine for the prosecution contended that the House of Commons, though they might inquire, could not lawfully publish the result of their inquiries to the detriment of any individual, and that at any rate the defendant could not justify the republication of a libel for his own advantage, because it had been published by the House of Commons on pretext of the good of the community.

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Lord Kenyon (without hearing the other side): "This is an application for leave to file a criminal information against the defendant for publishing a libel; so that the application supposes that this publication is a libel. But the inquiry made by the House of Commons was an inquisition made by one branch of the Legislature, to enable them to proceed farther and adopt some regulations for the better government of the country. This report was first made by a Committee of the House of Commons, then approved by the House at large, and then communicated to the other House; there it is now *sub judice*; yet we are told that it is a libel on the prosecutor. It is impossible for us to admit that the proceeding of either of the Houses of Parliament is a libel; and yet that is to be taken as the foundation of this application. The *King v. Williams*, so much relied upon, was decided in the worst of times, and it has no application to the present case. This is a proceeding by one branch of the Legislature, and therefore we cannot inquire into it. I do not say that we would never inquire whether the House of Commons has exceeded its jurisdiction; but acting within its jurisdiction, it cannot be controlled by us. An injunction by the House of Commons to stay proceedings in a common action between two individuals, we should treat as a nullity. But the House of Commons having the right to print and publish what they consider essential for public information, we cannot consider whether they have exercised that right properly on any particular occasion, and the individual who suffers from the exercise of it is without legal remedy."—*Lawrence, J.*: "It is of advantage to the public, and even to the legislative bodies, that true accounts of their proceedings should be generally circulated, and they

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would be deprived of that advantage if no person could publish their proceedings without being punished as a libeller."¹

Lord Kenyon, however, with great spirit and upon the soundest principles, would not suffer a peer under pretence of Parliamentary privilege to libel a fellow subject with impunity.

The Earl of Abingdon,² having quarrelled with his

1. 8 T. R. 293.

2. "Willoughby Bertie, fourth Earl of Abingdon (1740-1799), politician, the son of Willoughby Bertie, the third earl, by his wife Anna Maria, daughter of Sir John Collins, was born on Jan. 16, 1740, and succeeded to the earldom on his father's death in 1760. He was educated at Westminster School under Dr. William Markham, afterwards archbishop of York: in 1767 he was one of the stewards of the school anniversary. He proceeded to Magdalen College, Oxford, and was created M.A. on Jan. 20, 1761. He afterwards spent a few years in Geneva, where he adopted democratic principles. He seems to have made the acquaintance of Wilkes at an early date, and to have loyally supported him in his early struggles with the government. In 'The Speeches of John Wilkes,' published in 1777, the anonymous editor of the volumes, who is easily identified with Wilkes himself, describes Abingdon as 'one of the most steady and intrepid assertors of liberty in this age,' and the most delightful companion in private life. . . . Abingdon sympathized strongly with the French revolution. He opposed the war with France, and in 1798 published a rhapsodical eulogy on the revolution under the title of 'A Letter to Lady Loughborough from the Earl of Abingdon in consequence of her presentation of the colors to the Bloomsbury and Inns of Court Association.' This pamphlet passed through nine editions. Abingdon died on Sept. 26, 1779. He married on July 7, 1768, Charlotte, daughter and coheiress of Admiral Sir Peter Warren, K.B. (at one time M.P. for Westminster). She died on Jan. 28, 1794. By her he had three sons and a daughter. The eldest son, Montagu, born on April 30, 1780, succeeded his father as fifth earl, and died on Oct. 16, 1854. Willoughby, the second son, born on June 24, 1787, became a captain in the navy, and was wrecked in the Satellite off the Goodwin Sands in 1810. Abingdon was in the habit of sending copies of his speeches in parliament to the newspapers, 'with' (it is said) 'a handsome fee' to insure their insertion in a prominent position. In a speech delivered in the House of Lords on June 17, 1794, Abingdon called attention to the immoral practises of attorneys, and instanced the conduct of one, Thomas Sermon, an attorney once employed by himself. Abingdon forwarded the speech to the newspapers and it was published. Sermon thereupon brought a criminal information for libel against the earl in the court of King's Bench. The case was heard on Dec. 6, 1794, before Lord Kenyon. Erskine

attorney, delivered a most calumnious speech against him in the House of Lords, and then published it in a newspaper. The attorney indicted him for publishing the libel.

The trial coming on before Lord Kenyon at Westminster, the noble defendant appeared in Court as his own counsel. He modestly abstained from claiming to sit on the bench with the Chief Justice, but, remaining at the bar, he strenuously insisted on his right to be covered, because the Chief Justice and he were both peers and entitled to the same privileges.

Lord Kenyon : "I do not sit on this seat as a peer ; but being assigned by our Lord the King, as his Chief Justice, to hold pleas before him, out of respect to the Sovereign of these realms and to the sovereignty of the law the noble Earl must be uncovered."

The trial proceeded, and it was clearly proved that Lord Abingdon had sent his speech in his own handwriting to the newspaper-office with a request that it might be published. Being called upon for his defence, he contended that the prosecution could not be supported, as the alleged libel was printed from the written speech which he himself had actually read in his place in Parliament.

Lord Kenyon : "Heaven forbid that we should seek to animadvert here upon a speech made in Parliament. Parliament alone can inquire into the merits of a speech so made, and, if it deserves punishment, punish the offender. We inquire not respecting what the noble Earl did in the House of Lords, but what he did in Catherine-street in the Strand, when by his agent he delivered a paper in his own handwriting containing most calumnious charges against the prosecutor, and requested that it might be printed and published. This was

was the prosecuting counsel ; the defendant pleaded his own case. The jury found Abingdon guilty, and he was sentenced, Jan. 12, 1795, to three months' imprisonment, was fined 100*l.*, and was required to find sureties for future good behavior."—*Nat. Biog. Dict.*

CHAP.
XLIV.
Rex v. Earl
of Abing-
don.
Peer not
privileged
to publish
speech
delivered
by him in
the House
of Peers,
with a view
to libel an
individual.

CHAP. XLIV. the act of a simple individual seeking to gratify his malice, and he is criminally responsible for it, although he happens likewise to be an Earl."

The defendant was found guilty, and most justly sentenced to imprisonment.¹

Doctrine of
consequen-
tial dam-
age.

Lord Kenyon meritoriously checked the doctrine which was becoming too rampant, that a man is liable for the consequences, however remote or unforeseen, which can be traced to his acts. The proprietor of a theatre having brought an action against a critic for a libel on one of his performers, alleged in the declaration that the defendant, "contriving to terrify and deter a certain public singer called Gertrude Elizabeth Mara,"²

1. Espinasse, 226. In the year 1843 I tried unsuccessfully to carry a clause in my Libel Bill, to exempt from prosecution or action a true account of speeches in Parliament published *bona fide* for the information of the public; yet I have been severely censured for not deciding as a Judge that neither prosecution nor action can be maintained for a true account in a newspaper of anything said at any public meeting. This would, indeed, have been "Judge-made law."

2. Mrs. Gertrude Elizabeth Mara, daughter of Johann Schmeling, musician, was born at Cassel, on Feb. 23, 1749. Although celebrated as a vocalist, she began her musical career as a violinist, and was exhibited as a prodigy by her father at the age of ten, in London and other cities. To this early training she attributed her wonderful justness of intonation, but being induced to give up the violin as "unfeminine," she began the cultivation of her voice under an Italian master named Paradisi. She also studied 5 years at Hiller's academy at Leipzig, after which she is described as having "a voice remarkable for its extent and beauty, a great knowledge of music, and a brilliant style of singing." She now made her début at Dresden and Frederick II (having on her return from London refused her an engagement at the court of Berlin) was now (1771) persuaded to hear her, and showed his appreciation of her talent by engaging her to sing at court for life, at a salary of 11,250 francs. She married Johann Mara, violoncello-player, a man of dissipated habits, whom she met at the court concerts, and who rendered her extremely unhappy. The story is told that Frederick on one occasion sent a body of soldiers who dragged her from her bed and compelled her to sing at the opera when she complained of illness. He certainly refused to annul her contract when, after seven years, she was offered an engagement in London, and she made her escape with her husband to Vienna, where she remained, singing often in public, for two years. After a tour through Germany, Holland, and Belgium, during which

who had been retained by the plaintiff to sing publicly for him, wrote and published a certain malicious paper, etc., by reason whereof the said Gertrude Elizabeth Mara could not sing without great danger of being assaulted and ill-treated, and was prevented from so singing, and the profits of the theatre were rendered much less than they otherwise would have been." Madame Mara, being called as a witness, did swear that on account of the obnoxious article she did not choose to expose herself to contempt, and had refused to sing.

CHAP.
XLIV.

Lord Kenyon [stopping the defendant's counsel]: "The injury is much too remote to be the foundation of an action. An action might equally be supported against every man who circulates the bottle too freely and intoxicates an actor, *per quod* he is rendered incapable of performing his part upon the stage. The loss here arises from the vain fears and caprice of the actress. This action is to depend, forsooth! on the nerves of Madame Mara!"¹

He likewise did good service in discountenancing the rapacity of surveyors. One of these gentlemen

Rescue of
the public
from sur-
veyors.

she was heard by Mozart, who records in a letter that "she had not the good fortune to please me," she remained a short time in Vienna and left for Paris in 1782, where she and the celebrated Todi were rivals. Madame Mara made her first appearance in London in 1784, at the Pantheon, was one of the vocalists at the Handel Commemoration in 1784, also at the Handel festival of 1787. Her first appearance on the stage was in "Didone Abbandonata," and her success in Handel's "Giulio Cesare," in 1787, caused several repetitions of that opera during the season. She settled in London for ten years (after a visit to Venice in 1791), singing mainly in concert and oratorio, and carrying with her on leaving over 1,000*l.* as the result of a "benefit." She settled at Moscow, but, owing to her husband's dissipation, she was soon obliged to support herself by teaching, as her voice was now gradually losing strength. After the burning of Moscow, which ruined her, she moved to Revel, and in 1816 to London, where she was announced as "a most celebrated singer," whom her agents "were not at liberty to name;" but being now sixty-eight years old, her voice was entirely gone, and she never was heard again. In 1831 Goethe sent her a poem for her birthday. She died at Revel on Jan. 20, 1833.—See *Dict. Nat. Biog.*

1. *Astley v. Harrison, Peake*, 256.

CHAP.
XLVI.

insisted that he was entitled to 5 per cent. upon all the expenditure in erecting and finishing a house for his trouble in paying the tradesmen's bills, and called several witnesses to prove that this was the usual charge of surveyors.

Lord Kenyon: "The plaintiff states in his declaration his demand to be 'as much as he reasonably deserves' for his work and labor. Does he *reasonably* deserve to have this exorbitant demand? As to the custom attempted to be proved, the course of robbery on Bagshot Heath might as well be proved in a court of justice. It ought not to be and it cannot be supported."

The Plaintiff was nonsuited.¹

Lord
Kenyon's
laudable
zeal against
manu-
facturers of
slander.

Lord Kenyon showed a very laudable zeal to repress the very infamous practice of some fashionable journals in his time to invent scandalous stories of persons in "high life." The Morning Post published a paragraph referring to Lady Elizabeth Lambert, a very beautiful and accomplished girl of seventeen, whose character was unspotted and whose manners were irreproachable, stating that "she had made a *faux pas* with a gentleman of the shoulder-knot." Lady Elizabeth brought an action for this calumny, suing by her mother, the Countess Dowager of Cavan, as her *prochein amie*. The defendant's counsel tried to palliate the case on the ground of inadvertence and misinformation, allowing that the young lady had never displayed the smallest sign of levity, and had always been the pride and joy of her friends.

Lord Kenyon: "It is seriously to be lamented that the very many cases which are brought, some of them civil and some criminal, should have no effect on persons who publish newspapers to stop the progress of this which everybody complains of. If it is to be stopped, it is to be stopped by the discretion, good sense, and fortitude of juries. Gentlemen, it is to you,

1. *Upsdall v. Stewart, Peake, 255.*

and you only, that this lady can look for redress ; and it is not her cause only which has been this day pleaded before you—it is the cause of injured innocence spread from one end of the kingdom to the other ; and therefore if this lady is not to be protected, nay, if ordinary damages are to be given, and not such as shall render it perilous for men to proceed in this way, we are in an unpleasant situation indeed, and particularly so when we have heard it openly avowed in Court by the proprietors and publishers of newspapers that their commodity is not suited to the public taste unless *capsicum* is put into it—unless it be seasoned with scandal. I do not believe that in all the cases of libel ever canvassed, one so criminal as this is to be met with. You, gentlemen, are bound to guard the feelings of this injured lady ; and what the feelings of injured innocence are every one must feel who is not an apostate from innocence himself. You, gentlemen, before you give your damages, will put yourselves into the situation of this injured lady, asking yourselves if those whom you are most bound by the laws of nature and of God to protect had been insulted in a similar manner, what damages you would have expected from a jury of your country.”

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XLIV.

The jury found a verdict for the plaintiff with 4000*l.* damages.

In actions for criminal conversation his ardent love of morality blinded his judgment, prevented him from distinguishing the merits of each particular case, and led him to confound the principles of civil and criminal justice. On one occasion he said :

Misled by
his love for
morality.

“ My endeavors, I confess, to deter men from the enormous crime of adultery have hitherto proved ineffectual. But judges and juries are appointed to redress private and public wrongs ; we are the guardians of the morals of the people, and we ought never to relax in our efforts to prevent the commission of crimes which strike at the root of religion and of domestic purity and happiness. It is said here the defendant is not able to pay large damages, but this is an aggravation of his misconduct. Is his poverty to tempt him to injure unfortunate husbands ? but it will, if it enables him to do so with impunity, I advise you to give ample damages, that the vice may be suppressed.”

CHAP.
XLIV.

In another case in which the wife of the plaintiff (as he knew when he married her) was a wanton, it actually came out on cross-examination that she not only painted her face, but that she exposed her person most indecently :

Lord Kenyon : " I see no ground here for cutting down the damages. Such things as are imputed to the plaintiff's wife are not uncommon among ladies of quality, and no mercy should be shown to the defendant (*General Gunning*), who is an abominable, hoary, degraded creature."

In the famous case of *Howard v. Bingham*, he said :

" I had not been long in a court of justice before I felt that I should best discharge my duty to the public by making the law of the land subservient to the laws of religion and morality; and therefore, in various cases that have come before me, when I saw a considerable degree of guilt, I have pressed the judgment of juries to go along with me in enforcing the sanction of religion and morality by the heavy penalties of the law; and I have found juries coöperate with me in trying how far the immorality of a libertine age would be corrected by letting all parties know that they best consult their own interest by discharging those duties they owe to God and society."

Such speeches gained him great popularity with the vulgar, but made the judicious grieve. Even Lord Eldon, when Chief Justice of the Court of Common Pleas (although strongly disposed to support him), said on the trial of an action for seduction :

Lord
Eldon's
protest
against
Lord
Kenyon's
ultraism.

" I gladly lay hold of this opportunity of disburdening my mind of an opinion that has long lain heavily upon me, as it is directly in opposition to the judgment of one of the most learned judges and best of men that ever sat in Westminster Hall, a man to whom the laws of this country and (what is of more consequence) the public morals are as much indebted as to any man among the living or the dead. But having offered this tribute to truth, I am bound by my oath to give my own opinion, that, in a civil action of this nature, the jury are bound by law to consider, in awarding the amount of damages, not what may be an adequate punishment to the defendant for

his criminality, but what will be a sufficient compensation to the plaintiff for the injury complained of." CHAP.
XLIV.

Lord Kenyon likewise carried on a furious war against the destructive vice of *gaming*, which he declared to be mischievously prevalent in both sexes. He recommended that fashionable gaming establishments should be indicted as common nuisances, adding this threat, which is said to have caused deep dismay: "If any such prosecutions are fairly brought before me, and the guilty parties are convicted, whatever may be their rank or station in the country, though they may be the first ladies in the land, they shall certainly exhibit themselves in the pillory."

The ungallant attack upon the fair sex roused a chivalrous defence from the Earl of Carlisle,¹ who described the sad consequences arising from the tribunals of justice being occupied by "legal monks, utterly ignorant of human nature and of the ways of men, who were governed by their own paltry prejudices, and thought they must be virtuous in proportion as they were coarse and ill-mannered."

Lord Kenyon cared nothing for any of these invectives, except the imputation of being a "legal monk," Lord
Kenyon's
indignation
at being
called a
"legal
monk." This stuck to him very fast, and he frequently complained of it. When making any observation to the

1. Frederick Howard, fifth Earl of Carlisle, the only son of Henry, the fourth Earl, by Isabella, daughter of the fourth Lord Byron. He was born on May 28, 1748, and succeeded his father as fifth Earl on Sept. 4, 1758. He was educated at Eton and King's College, Cambridge. Several years after leaving Cambridge, he was known only as a man of pleasure and fashion, he and Fox being accounted the two best-dressed men in town. Like Fox he was excessively fond of gaming and became surety for the latter's gambling debts. Freeing himself, however, from the gaming-table, he turned his attention to politics, holding many important offices. In 1778 Lord North appointed him chief of the commission to treat with the American colonists. The efforts of the commission were fruitless, the American demands being in excess of its powers. Afterwards he was a member of several administrations, and died on Sept. 4, 1825 at Castle Howard. See *Dict. Nat. Biog.*

CHAP. XLIV. jury which he thought very knowing as well as emphatic, he would say :

"But, gentlemen, you will consider how far this is entitled to any weight, coming from a *legal monk* ; for a great discovery has been made, that the Judges of the land, who are constantly conversant with business, who see much more of actual life on their circuits and in Westminster Hall than if they were shut up in gaming-houses and brothels, are only *legal monks*."

On another occasion he said :

"Somebody tells us that the Judges are *legal monks*—that they know nothing of the world. What is the world? It is necessary to define terms, in order to know what the world is, and what is meant by this knowledge of the world. If it is to be got by lounging, like young men of fashion, about Bond street, or at gaming-tables, or at Newmarket, or in private houses of great men, or in brothels, I disavow being acquainted with it. But surely something of what may be called a knowledge of the world, *quicquid* AMANT¹ *homines*, may be contained in courts of justice."

It is said that he went on addressing grand juries on the circuit in this strain, till Lord Carlisle threatened to bring him before the House of Lords for a breach of privilege.

By his hot temper, betrayed into the toleration of insolence.

His indiscreet impetuosity of manner and his want of *tact* sometimes subjected him to the triumph of ribaldry and rudeness. In prosecutions for blasphemy, by at first interrupting the defendant's counsel without reason, he was beaten, and he afterwards allowed an open reviling of our holy religion, which he ought peremptorily to have stopped. "Christianity is certainly parcel of the law of England" in this sense, that openly to insult its Divine Author is a misdemeanor which is punishable when committed, and which Judges are justified in preventing. Yet Mr. Stewart Kyd,² who

1. Sic.

2. "Stewart Kyd (d. 1811), politician and legal writer, a native of

called upon the prosecutor to produce "a certain book called the Bible," after one or two small victories to which he was strictly entitled, was very improperly permitted to ridicule and stigmatize at great length the most sacred truths of the Gospel.

CHAP.
XLIV.

On another occasion, John Horne Tooke, taking advantage of the Chief Justice's hasty temper, succeeded in acting such a scene of insolence as no other Judge would have endured. At the Westminster election, in 1788, Mr. Fox, having a large majority on the poll, was returned as duly elected, but Horne Tooke, the unsuccessful candidate, presented a petition against him. This being referred to a select committee under the Grenville Act, was voted "frivolous and vexatious." Mr. Fox was thus entitled to his costs, which were taxed at 198*l.* 2*s.* 6*d.*, and payment of this sum being refused, an action was brought to recover it. The statute provided that, on the trial of such an action, no evidence should be necessary or receivable beyond the resolution of the committee and the taxation of costs verified by the signature of the Speaker of the House of Commons. Horne Tooke now appeared as his own counsel. Ers-

Lord Chief
Justice
Kenyon
kicked by
John
Horne
Tooke.

Arbroath, Forfarshire, went at the age of fourteen from Arbroath grammar school to King's College, Aberdeen. Abandoning a design of entering the church, he settled in London, and was called to the bar from the Middle Temple. He became a firm friend of Thomas Hardy and John Horne Tooke, whose political opinions he admired. In November, 1792, he joined the Society for Constitutional Information. On 29 May, 1794, he was arrested and examined by the privy council, but was soon discharged. On June 4, he was again summoned before the council, and three days later was committed to the Tower on a charge of high treason, with Hardy, Tooke, and ten others. On Oct. 25 all the prisoners were brought up for trial before a special commission at the Old Bailey, but after the acquittal of Hardy, Tooke, and Thelwall, the attorney general declined offering any evidence against Kyd, and he was discharged. In June, 1797, he ably defended Thomas Williams, a bookseller, who was indicted for blasphemy in publishing Paine's 'Age of Reason.' His speech was printed during the same year. Kyd died in the Temple on Jan. 26, 1811, (Scots Mag. lxxiii, 159). His portrait has been engraved." —*Nat. Biog. Dict.*

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XLIV.

kine, for the plaintiff, that he might give his opponent no topics to dilate upon, merely said, with his usual discretion, "I am forbidden by the Act of Parliament to enter into any discussion of the merits of this case, or anything relating to them. I will, therefore, merely put in the statutable evidence to entitle Mr. Fox to your verdict for the sum of 198*l.* 2*s.* 6*d.*" This evidence he gave in the course of two minutes, and said, "This, my Lord, is my case."

Lord Kenyon, although he had been told that the defendant was to attend as his own counsel and to make a "*terrible splash*," said, in a sharp, contemptuous tone, "Is there any defence?"

Horne Tooke (taking a pinch of snuff, and looking round the Court for a minute or two): "There are three efficient parties engaged in this trial—you, gentlemen of the jury, Mr. Fox, and myself, and I make no doubt that we shall bring it to a satisfactory conclusion. As for the Judge and the Crier, they are here to preserve order; we pay them handsomely for their attendance, and, in their proper sphere, they are of some use; but they are hired as assistants only; they are not, and never were, intended to be the controllers of our conduct. Gentlemen, I tell you there is a defence, and a very good defence, to this action, and it will be your duty to give effect to it."

He then began a long narrative of the last Westminster election, and, without any interruption, had come to what he called the financial part of it, stating that Lords of the Treasury were expected to pay 200*l.* a piece, and those in higher situations more, according to their salaries. At last, Lord Kenyon burst out:

"Mr. Horne Tooke, I cannot sit in this place to hear great names and persons in high situation *calumniated and villified*—persons who are not in this cause—persons who are absent, and cannot defend themselves. A court of justice is not a place for *calumny*; it can answer no purpose; you must see the impropriety of it, and it does not become the feelings of an honorable man."

H. T. (again taking snuff) : "Sir, if you please, we will settle this question between us now in the outset, that I may not be liable to any more interruptions."

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XLIV.

C. J. : "Lord Lovat brought forward offensively the names of persons of great respectability, and he was stopped by the House of Lords. The Chancellor informed him that it was indecent to do so, and that a man of his station ought to refrain from such things. You are in the wrong path, Mr. Horne Tooke."

H. T. : "I am persuaded that I shall be able very easily and very shortly to satisfy you that I am not in the wrong path, and it is more desirable that I should do so now, because it is the path which I most certainly mean to pursue, and will not be diverted from. You know (at least you ought to know), and I acknowledge, that if, under the pretence of a defence in this cause, I shall wantonly and maliciously say or do any word or thing which would be punishable by the laws of the land, if said or done by me wantonly and maliciously anywhere else, I shall be equally liable to prosecution and punishment by the same laws and in the same manner for what I shall say here. But, Sir (taking another pinch of snuff, and lowering his voice, so as effectually to fix the attention of the audience), you have made use of some words which I am willing to believe you used in a manner different from their usual acceptation. You spoke of *calumniating* and *vilifying*. Those words, Sir, usually include the notion of *falsehood*. Now, I presume you, Sir, did not mean them to be so understood. I am sure you did not mean to tell the jury that what I said was *false*. By *calumny* you only meant something *criminatory*—something injurious to the character of the person spoken of—something that he would not like to hear, whether true or false."

C. J. : "Certainly, Mr. Horne Tooke ; certainly."

H. T. : (with an affectation of good nature) : "Well, I though so ; and, you see, I was not desirous to take advantage of the words to impute to you any wrong meaning or intention ; because, had you really intended *falsehood* in the word *calumny*, your Lordship would have grossly *calumniated* me. I have spoken nothing but the truth, as, I believe, you know, and which I am able and willing to prove. In one thing I go farther than you do, and am stricter than you are. I think it hard that any persons, whether in a cause or out of a cause,

CHAP. XLIV. should at any time *unnecessarily* hear what is unpleasant to them, though true. This rule I mean to observe. At my peril I shall proceed, and I expect to meet with no farther interruption from your Lordship."

Having thus gained a complete mastery over the Chief Justice, he proceeded to waste the public time most shamefully, and to make many observations which ought to have been stopped, and with discretion and firmness might easily have been stopped, by the Judge. Thus he ridiculed the prevailing notion of "the independence of the Judges."

"When anything peculiarly oppressive is now a-days to be done, we have always a clatter made about the *judicial independence* with which we are now blessed. My own belief is, that the Judges are now much more dependent on the Crown and much less dependent on the people than in former times, and, generally speaking, they were certainly more independent in their conduct. They then sat on the bench, knowing they might be turned down again to plead as common advocates at the bar; and indeed it was no uncommon thing in those days to see a counsel at the bar browbeaten and bullied by a Chief Justice on the bench, who in a short time after was to change places with the counsel and to receive in his own person the same treatment from the other in his turn. Character and reputation were then of consequence to the Judges, for if they were not well esteemed by the public, they might be reduced to absolute destitution; whereas if they were sure of being well employed on returning to the bar, dismissal from their poorly-paid offices was no loss or discredit, and they might set the Crown at defiance. Now they are completely and for ever independent of the people, and from the Crown they have everything to hope for themselves and their families. Till the corrupt reign of James II., no common law Judge was ennobled. Chief Justices Coke and Hale, infinitely greater lawyers and abler men than any of their successors in our time, lived and died commoners. Who was the first judicial Peer? the infamous Judge Jeffreys. But in his campaign in the West, and on other occasions, he had done something to deserve and to illustrate the peerage. Now a-days the most

brilliant apprenticeship to the trade of a Peer is to carry a blue bag in Westminster Hall ! This suddenly leads to riches, and the lawyer suddenly rich is made a Baron ; whereas the fact of some particular individual of suspicious character being all of a sudden flush of money who was never known to have any before, often in the good old times led to the certain detection of the thief."

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XLIV.

He then, to show how badly justice was administered, told a long story of a prosecution which he had instituted against some rioters at the Westminster election being defeated by the single circumstance of his counsel having entered the court a few minutes after nine in the morning, the Chief Justice having ordered them all to be acquitted for want of prosecution. Mr. Garrow here interposed, and by stating the true facts of the case, showed that Mr. Tooke, his counsel, attorney, and witnesses, had all been guilty of gross negligence, and that the Chief Justice had shown upon that occasion great patience and indulgence :

H. T. : " There can be no doubt at all but that your Lordship will always find some one in your own Court willing and ready to get up and recommend himself to your favor by a speech in your defence. I should have been surprised if it had not been the case now ; but I must rather thank Mr. Garrow, for he has given me time to breathe awhile."

C. J. : " I want no defence, Sir ; I want no defence, no defence. What has been said against me rather excites my compassion than my anger. I do not carry about me any recollection of the trial alluded to, or any of its circumstances."

H. T. : " I cannot say that I *carry about me anything* in consequence of it. I *carry about me something less*, by all the money which it took out of my pocket. Although Mr. Garrow has jumped up to contradict me, the affair happened exactly as I stated it. I heard him with much pleasure, for, as I said, I wanted to breathe. But we may have a different House of Commons, to consist of the real representatives of the people, of whom I may happen to be one, and I pledge myself now

CHAP. XLIV. that I will, in my place there, call you, my Lord, to a proper account for your conduct that day, and Mr. Garrow may reserve his justification of your Lordship's conduct till that time, when I fear you will stand greatly in want of it. Now, gentlemen, having proved to you how a Judge may be made courteous and quiet, and may be taught to confine himself to the discharge of his proper duties in this place, I shall conclude by asking you, who alone have anything to do with the verdict, whether you think it fair that I should pay the costs incurred by Mr. Fox as candidate for Westminster, and you will well and truly try that which is the true and the only issue between us."

C. J. : "Gentlemen, you are bound by your oaths 'well and truly to try this cause,' and the question is, whether by the law of the land the defendant is bound to pay the plaintiff this sum of 198*l.* 2*s.* 6*d.* Now, gentlemen, by the law of the land, if the petitioner refuses to pay the costs of an election petition, voted frivolous and vexatious, when duly taxed as the Act directs, he may be brought before a court of justice and compelled to do so. If you believe the evidence (which is not contradicted), you have such a case before you, and you will 'well and truly have tried this cause,' by finding a verdict for the plaintiff for the sum demanded."

Nevertheless, several of the jury had been much captivated by Horne Tooke's eloquence, and they cared very little for the direction of a Judge who had suffered himself to be so insulted. Therefore, it was not until after a struggle of four hours and twenty minutes that they were induced to concur in finding a verdict for the plaintiff.¹ If Lord Mansfield had presided on this occasion, without ever having been angry or excited, he would have put a speedy end to such attempts at ribaldry, and Horne Tooke would have left the court not only defeated, but disgraced.

Erroneous
decisions
of Lord
Kenyon.
Criminal
informa-
tion for a
jeu
d'esprit.

I cannot justly conclude my notice of Lord Kenyon's judicial decisions, without pointing out a few of them in which he was egregiously wrong. An application

1. 1 Townsend, 59.

was made to the Court of King's Bench for a criminal information against the printer of a newspaper. In this newspaper had appeared the following paragraph "of and concerning" the prosecutor, the then Earl of Lonsdale, who, from being engaged in constant litigation with all his neighbours, had the reputation of being "the greatest *law Lord* in England :

CHAP.
XLIV.

"The painters are much perplexed about the likeness of the Devil. To obviate this difficulty concerning His Infernal Majesty, PETER PINDAR¹ has recommended to his friend OP² the countenance of LORD LONSDALE."

Now, this impudent attack, however indecorous, was hardly sufficiently grave to be made the foundation of a common action or indictment, but was wholly unfit for the special interference of the Court of King's

1. John Wolcot, M.D., a satirist, born at Dodbrooke, Devonshire, 1738. He was educated first at Kingsbridge, in his native county, and next at Bodmin, Cornwall, after which he was brought up under his uncle, an apothecary at Fowey, who left him the principal part of his estate. In 1767 he obtained a doctor's degree in Scotland, and the same year went with Sir William Trelawney to Jamaica, but on the death of his patron he returned to England, and settled as a physician in Cornwall, where he became the instructor of Opie the painter, with whom he visited London in 1780. He now quitted physic, and began, under the name of Peter Pindar, some severe attacks on the Royal Academicians, in a series of odes criticising their annual exhibitions. After this he took higher aim, and published a satirical poem, called "The Lousiad" ; in which he ridiculed the king with more wit than truth or manners. After this he brought out a number of ludicrous pieces, which went through numerous editions, both separately and collectively. The author became blind some years before his death, which happened in Somers Town, Jan. 14, 1819.—*Cooper's Biog. Dict.*

2. John Opie, a distinguished English painter, born near Truro, in Cornwall, in 1761. Some of his portraits and sketches attracted the notice of Dr. Wolcott, the satirist, who took the young artist under his protection and introduced him into London society, where he enjoyed for a time the patronage of the fashionable world. He married as his second wife, in 1798, Miss Amelia Alderson, who afterwards obtained great popularity as a writer. Opie gave particular attention to historical subjects, and painted "The Death of Rizzio," "Jephthah's Vow," and "Belisarius." He succeeded Fuseli as professor of painting in the Royal Academy in 1806. Died in 1807.—*Thomas's Biog. Dict.*

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XLIV.

Bench,—which is only to be invoked in cases of real importance. Erskine accordingly thought that he should laugh it out of Court :

“The noble Earl can only apply to your Lordships from a sense not of wounded character but of *wounded beauty—spreta injuria formæ*. There is no hidden malice in the writer—he does not recommend that this portrait of the devil should be painted *with horns*.”

Lord Kenyon : “The tongue of malice has never said that.”

Erskine : “True, my Lord, and nothing could be meant but a comparison of bodily appearance, without any insinuation that there was a mental likeness. And here, my Lords, without any disrespect to the noble prosecutor, I must be allowed to say that the paragraph is not a libel on him, but on the devil. That great personage would doubtless apply to your Lordships for protection had it not been for the maxim that ‘those who apply to your Lordships must come into court with *clean hands*.’ Although Lord Lonsdale may reckon himself a very handsome man, he should recollect that to liken his countenance to that of the devil is a high compliment. In appearance he falls greatly short of the devil, and therefore he ought to have been much flattered by the comparison. I would (though a poor man), for the sake of my family, give Opie or Fuseli¹ one hundred guineas for a likeness of myself verifying the description of his infernal majesty in Milton :

“He above the rest
In shape and gesture proudly eminent,
Stood like a tower ; his form had not yet lost
All her original brightness, nor appeared
Less than archangel ruined, and the excess
Of glory obscured.”

“The devil was still handsome, even in the most unpromising masquerade, when he had entered the body of a serpent.

1. Henry Fuseli or Fuessli, was the second son of John Gaspar Fuessli, and born at Zurich, 1741. He came to England at an early age, and devoted himself to painting. His performances are numerous, and all of them display, in many points, the mind of a master. For twenty years he worthily filled the offices of professor of painting and keeper of the Royal Academy. Died April 16, 1825. He published “Lectures on Painting,” 1801, and an enlarged edition of Pilkington’s Dictionary of Painters, 1805.—*Cooper’s Biog. Dict.*

In addressing *Eve*, we are told 'pleasing was his shape and lovely.' Why, then, should Lord Lonsdale be afraid that the devil depicted with the features of his Lordship must excite disgust? But, my Lords, the paragraph is mere pleasantry, quite unsuited to your Lordships' notice."

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Lord Kenyon: "I am of opinion that we should protect the characters of individuals from ridicule and contempt. We must abide by the rules which the Court has laid down, and not be led away by the brilliancy and imagination of an advocate. Let the rule be made absolute."

The puisnes, who had not been consulted before this judgment was pronounced, looked aghast. From their demeanor during *Erskine's* speech they were supposed to be on his side, but they remained silent.

In *Haycraft v. Creasy* Lord Kenyon was very properly overruled by his brother judges, and the mortification which he suffered was supposed to have occasioned his death. The action was brought by a shopkeeper against a credulous old gentleman for having given a deceitful representation of the character and circumstances of a young lady of the name of Robinson, whereby the plaintiff had been induced to sell to her a large quantity of goods on credit, the price of which he had lost. The defendant having, like many others, been deceived by her arts, and really believing that what he said was true, told the plaintiff that she was a lady of great fortune and heiress of the estate of Fascal, in the county of Perth, and that she was not only respectable herself, but nearly connected with some of the highest families in Scotland. In truth, she was a mere adventuress, and swindled all that would trust her. Law, for the defendant, contended that the action could not be maintained, as there was no *mala fides* to support it, and to make him liable without actual *deceit* would be to treat him as *surety* for Miss Robinson without any written guarantee.

Lord
Kenyon
overruled
in *Haycraft*
v. Creasy.

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Lord Kenyon : "The Attorney General relies on the Statute of Frauds. To this I shortly reply by saying that the Statute of Frauds has nothing to do with this case. The defendant is sued, not as surety for Miss Robinson, but for stating respecting her that which was not true, and which he had the means of knowing, and must be supposed to have known, was not true, whereby a damage has been suffered by the plaintiff. If the present action cannot be supported, I have now for twelve years been deceiving the people of this country. Am I now, when perhaps from years the progress of my intellect may be retrograde, to unsay what I have said so often? Where can I go to hide my head if this point should now be decided otherwise? What can I say to the people of this country? The ground I go upon is this : Did the defendant assert to be true that which he did not know to be true? This I consider sufficient evidence to support the charge of fraud. It may not amount to moral turpitude, but it is, in my opinion, sufficient to constitute legal fraud, and legal fraud is, in my opinion, enough to support an action of deceit."

Grose, Lawrence, and Le Blanc, Js., however, on the assumption that the defendant was a dupe, clearly held that he could not be made liable in this form of action, which supposed that the defendant had stated what he knew to be false, or that, from some bad motive, he had stated as true facts, which were untrue, and the truth of which had not been investigated. As his brethren proceeded *seriatim* in this strain, the Chief Justice's face showed the most terrible contortions; and when they had finished he exclaimed :

"Good God ! what injustice have I hitherto been doing ! What injustice have I been doing !"

A gentleman who witnessed the scene, says :

"It was visible to every person in court that this ejaculation was not uttered in the penitent voice of regret for any injustice which he might unconsciously have done from a mistake of the law, but in the querulous tone of disappointed pride, from finding that the other judges had presumed to

think for themselves, and to question the supremacy of his opinion."¹

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No case of witchcraft having ever come before Lord Kenyon, we do not certainly know his opinions upon this subject, but he was probably sufficiently enlightened to have held that the statutes against it having been all expressly repealed, it could not be dealt with by the criminal courts as a temporal offence. He was, however, enthusiastically devoted to the doctrine that, although the statutes against *forestalling* and *re-grating* had "in an evil hour" been all expressly repealed, any such offence was still a misdemeanor at common law, and deserved to be punished with exemplary severity. Dearth in bad seasons he imputed to the combinations of farmers and the speculations of corn-merchants. Buying provisions to resell to the consumers he allowed to be legitimate commerce, as the farmer could hardly sell the produce of his farm by retail; but any buying of provisions with a view to resell to a dealer at an advanced price he declared had a direct tendency to deprive the poor of the necessities of life, and therefore "blinked upon murder." The notion that the price of commodities is regulated by the proportion between the supply and the demand, he thought was only fit to be entertained by democrats and atheists. These sentiments were at the time highly popular, and contributed to raise his reputation as a great judge.

Lord
Kenyon's
fury
against
forestallers
and re-
graters.

The first case in which he prominently propounded them was the *King v. Waddington*,² in which he granted a criminal information against the defendant for entering into forehand bargains with hop-growers to buy from them at a fixed price all the produce of their hop-gardens for a year. After a verdict of guilty, the de-

1. Note-book of a Retired Barrister.

2. 1 East, 143, 166.

CHAP. lendant was brought up for judgment, and the legality
XLIV. of the conviction being questioned, Lord Kenyon said :

"It had been contended that if practices such as those with which the defendant stands charged are to be deemed criminal and punishable, the metropolis would be starved, as it could not be supplied by any other means. I by no means subscribe to that position. I know not whether it be supplied from day to day, from week to week, or how otherwise ; but this is to me evident, that in whatever manner the supply is made, if a number of rich persons are to buy up the whole or a considerable part of the produce from whence such supply is derived, in order to make their own private and exorbitant advantage of it to the public detriment, it will be found to be an evil of the greatest magnitude ; and I am warranted in saying that it is a most heinous offence against religion and morality, and against the established law of the country. So far as the policy of this system of laws has been called in question, I have endeavored to inform myself as much as lay in my power, and for this purpose I have read Dr. Adam Smith's¹ work, and various other publications upon the same

1. Adam Smith, a celebrated Scottish philosopher and political economist, born at Kirkaldy, in Fifeshire, June 5, 1723. He was educated at the University of Glasgow, where he remained from 1737 to 1740, and at Balliol College, Oxford, which he quitted about 1747. Having returned to Scotland, he formed friendships with Hume and Lord Kames. In 1751 he obtained the chair of logic in the University of Glasgow. He became professor of moral philosophy in the same university in 1752, and published his "Theory of Moral Sentiments" in 1759. He was very popular as a lecturer. In 1763 he resigned his professorship, and accepted the place of companion to the young Duke of Buccleugh, with whom he travelled on the continent two or three years. He associated in Paris with D'Alembert, Necker, Turgot, and Quesnay. In 1766 he returned to Kirkaldy, where he passed ten years in the composition of the work on which his reputation is chiefly founded, "An Inquiry into the Nature and Causes of the Wealth of the Nations." He maintains that labor rather than money or land is the true source of national wealth. He also advocated free trade and opposed the policy of those governments which attempt to control the laws of supply and demand. After the publication of this work he passed two years in London. He was appointed one of the commissioners of customs for Scotland in 1778, after which date he resided in Edinburgh until his death. He never married, Died in July, 1790. "Perhaps," says Mackintosh, "there is no ethical work since Cicero's 'Offices,'

subject, though with different views of it. I do not pretend to be a competent judge in this conflict of public opinion, though I cannot help observing that many of those who have written in support of our ancient system of jurisprudence, the growth of the wisdom of man for so many ages, are not, as they are alleged by some to be, men writing from their closets without any knowledge of the affairs of life, but persons mixing with the mass of society and capable of receiving practical experience of the soundness of the maxims they inculcate."

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The defendant was punished by imprisonment and a heavy fine.

But Lord Kenyon's most elaborate and most applauded attack against forestallers and regraters was on the trial of an eminent corn-merchant of the name of Rusby, who stood indicted before him at Guildhall, for having bought a quantity of oats, and having resold them to another corn-merchant at a profit in the course of the same day. Thus, in a most impassioned tone, and with an assumption of peculiar solemnity, he summed up the evidence :

"It frequently becomes the duty of juries in this place to decide causes where the interests of individuals are concerned, but a more important duty is imposed upon you to-day. This

of which an abridgment enables the reader so inadequately to estimate the merit, as the 'Theory of Moral Sentiments.' This is not chiefly owing to the beauty of diction, as in the case of Cicero, but to the variety of explanations of life and manners which embellish the book often more than they illustrate the theory. Yet, on the other hand, it must be owned that for philosophical purposes few works more need abridgment; for the most careful reader frequently loses sight of principles buried under illustrations. . . . That Smith is the first who has drawn the attention of philosophers to one of the most curious and important parts of human nature—who has looked closely and steadily into the workings of sympathy, its sudden action and reaction, its instantaneous conflicts and its emotions, its minute play and varied illusions—is sufficient to place him high among the cultivators of mental philosophy." The same writer speaks of Smith's "Wealth of Nations" as "perhaps the only book which produced an immediate general and irrevocable change in some of the most important parts of the legislation of all civilized nations."

—*Thomas's Biog. Dict.*

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cause presents itself to your notice on behalf of all ranks, rich and poor, but more especially the latter. Though in a state of society some must have greater luxuries and comforts than others, yet all should have the necessities of life; and if the poor cannot exist, in vain may the rich look for happiness or prosperity. The legislature is never so well employed as when they look to the interests of those who are at a distance from them in the ranks of society. It is their duty to do so; religion calls for it; humanity calls for it; and if there are hearts not awake to either of those feelings, their own interest would dictate it. The law has not been disputed; for though *in an evil hour* all the statutes which had been existing above a century were at one blow repealed, yet, thank God, the provisions of the common law were not destroyed. The common law, though not to be found in the written records of the nation, yet has been long well known. It is coeval with civilized society itself, and was formed from time to time by the wisdom of mankind. Even amongst the laws of the Saxons are to be found many wise provisions against forestalling and offences of this kind; and those laws laid the foundation of our common law. Speculation has said that the fear of such an offence is ridiculous; and a very learned man—a good writer—has said, ‘you may as well fear witchcraft.’ I wish Dr. Adam Smith had lived to hear the evidence of to-day, and then he would have seen whether such an offence exists, and whether it is to be dreaded. If he had been told that cattle and corn were brought to market, and there bought by a man whose purse happened to be longer than his neighbor’s, so that the poor man who walks the streets and earns his daily bread by his daily labor could get none but through his hands, and at the price he chooses to demand; that it had been raised 3*d.*, 6*d.*, 9*d.*, 1*s.*, 2*s.*, and more a quarter on the same day, would he have said there is no danger from such an offence? Gentlemen, we are not ‘legal monks,’ as was said in another place, but come from a class of society that, I hope and believe, gives us opportunities of seeing as much of the world, and that has as much virtue amongst its members as any other, however elevated. It has been said that in one county—I will not name it—a rich man has placed his emissaries to buy up all the butter coming to the market; if such a fact does exist, and the poor of that neighborhood can-

not get the necessities of life, the event of your verdict may be highly useful to the public."¹ CHAP.
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A verdict of guilty being instantly pronounced, Lord Kenyon said—"Gentlemen, you have done your duty, and conferred a lasting obligation on your country." The Defendant was sentenced to a heavy fine and long imprisonment.

The cry was then as strong for protection against forestallers as it has more recently been for protection against foreign importation; and so general was the agitation that corn-merchants were in great danger of being torn to pieces by judge-led mobs. I am ashamed to say that most of the puisne judges participated in the hallucination of the Chief Justice of the King's Bench, insomuch that Sydney Smith² thus wrote in his old age :

1. Peake, N. P. Cas. 189.

2. Sydney Smith, the celebrated wit and canon of St. Paul's, was born June 3, 1771, at Woodford in Essex. His father is said to have left his wife at the church door—to "wander over the world," and after his return to have bought and spoilt, and then sold, nineteen different places in England, so perhaps some of Smith's eccentricities, or rather wit, may be laid at the door of heredity. Sydney was the second son, having three brothers and one sister. He and his younger brother Courteney were sent to school at Winchester, where, though bullied and half starved, they won so many prizes that their schoolfellows sent in a round-robin refusing to compete with them. In 1789 Sydney became a scholar of New College, Oxford, and obtained a fellowship in his second year of 100*l.* a year, upon which he maintained himself without further help from his father. Although Smith wished to go to the bar, he was unable to do so, his father refusing to assist him, and he was compelled to take orders, being ordained in 1794. Afterwards he travelled as tutor to the eldest son of Michael Hicks-Beach. In 1800 he married Catherine Amelia, daughter of John Pybus of Chean, against the opposition of her family. At the time Smith's whole fortune consisted of "six small silver tea-spoons." In connection with Jeffrey and Brougham in 1802 he started the famous Edinburgh "Review," to which, though not formally editor, he contributed for many years. At this time he was living in Edinburgh, supporting himself by teaching. Later he removed to London, where for a time his success was problematical. Lady Holland said that at this period Sydney's finances were "enigmatic," and congregations to which he

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"This absurdity of attributing the high price of corn to the combinations of farmers and the dealings of middle-men was

gave a few "random sermons" thought him mad—and the clerk, he said, was afraid that he might bite. Notwithstanding this his sermons attracted great attention and, perhaps more to the purpose, large congregations. Albemarle street, where he lectured, was "impassable," and "galleries had to be added to the lecture-hall." When the Whigs were in power Erskine, at the request of Hollands, gave Smith the chancery-living of Foston-le-Clay, eight miles from York, worth 500*l.* a year. He afterwards advocated the catholic emancipation anonymously. "Smith wrote a pamphlet against the ballot in 1839. His last literary performance was a petition to the United States congress in 1843 complaining of the State of Pennsylvania, which had suspended the interest on its bond; he published it in the "Morning Chronicle," and followed it by letters which made some sensation in both countries. Payments were resumed soon after his death. The last years of his life, however, passed peacefully; and his letters show the old spirit to the end. In the autumn of 1844 he was brought from Combe-Florey, to be under the care of his son-in-law, Dr. Holland. He died at Green street on February 22, 1845, and was buried at Kensal Green. Mrs. Smith died in 1852. Four of Smith's children survived infancy. Saba, born in 1802 (a name which he invented in order that she might not have two commonplace names), married Dr. (afterwards Sir) Henry Holland in 1834, wrote her father's life, and died in 1866; Douglas, born 1805, was distinguished at Westminster and Christ Church, and died on April 15, 1829, to his father's lasting sorrow: Emily, born in 1807, married Nathaniel Hibbert of Munden House, Watford, on January 1, 1828, and died in 1874; Windham was born in 1813, and survived his father. Bishop Monk of Gloucester said that Smith had got his canonry for being a scoffer and a jester. The same qualities were said by others to have prevented his preferment in the virtuous days of Tory ministers. People, as Greville says, met him prepared to laugh; and conversation became a series of "pegs" for Smith "to hang his jokes on." His drollery produced uproarious merriment. Mackintosh is described as rolling on the floor, and his servants had often to leave the room in fits of laughter (Moore, *Journals*, vol. vi. p. 13; Brougham, "Life and Times," i. 246). If he sometimes verged upon buffoonery, he avoided the worst faults of the professional wit. His fun was the spontaneous overflow of superabundant animal spirits. He was neither vulgar nor malicious. "You have been laughing at me for seven years," said Lady Dudley, "and have not said a word that I wished unsaid" ("Lady Holland," i. 417). He burnt a pamphlet of his own which he thought one of "the cleverest he had ever read," because he feared it might give pain to his antagonists (ib. ii. 427). His wildest extravagances, too, were often the vehicle of sound arguments, and his humor generally played over the surface of strong good sense. His exuberant fun did not imply scoffing. He was sensitive to the

the common nonsense talked in the days of my youth. I remember when ten judges out of twelve laid down this doctrine in their charges to the various grand juries on their circuits." CHAP.
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charge of indifference to the creed which he professed. He took pains to protest against any writing by his allies which might shock believers. He had strong religious convictions and could utter them solemnly and impressively. It must, however, be admitted that his creed was such as fully to account for the suspicion. In theology he followed Paley, and was utterly averse to all mysticism in literature or religion. He ridiculed the "evangelicals," and attacked the Methodists with a bitterness exceptional in his writings. He equally despised in later days the party there called "Puseyites." He was far more suspicious of an excess than of a defeat of zeal. His writings upon the Established Church show a purely secular view of the questions at issue. He assumes that a clergyman is simply a human being in a surplice, and the church a branch of the civil service. He had apparently few clerical intimacies, and his chief friends of the Edinburgh "Review" and Holland House were anything but orthodox. Like other clergymen of similar tendencies, he was naturally regarded by his brethren as something of a traitor to their order. Nobody, however, could discharge the philanthropic duties of a parish clergyman more energetically, and his general goodness and the strength of his affections are as unmistakable as his sincerity and the masculine force of his mind.—See *Dict. Nat. Biog.*

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